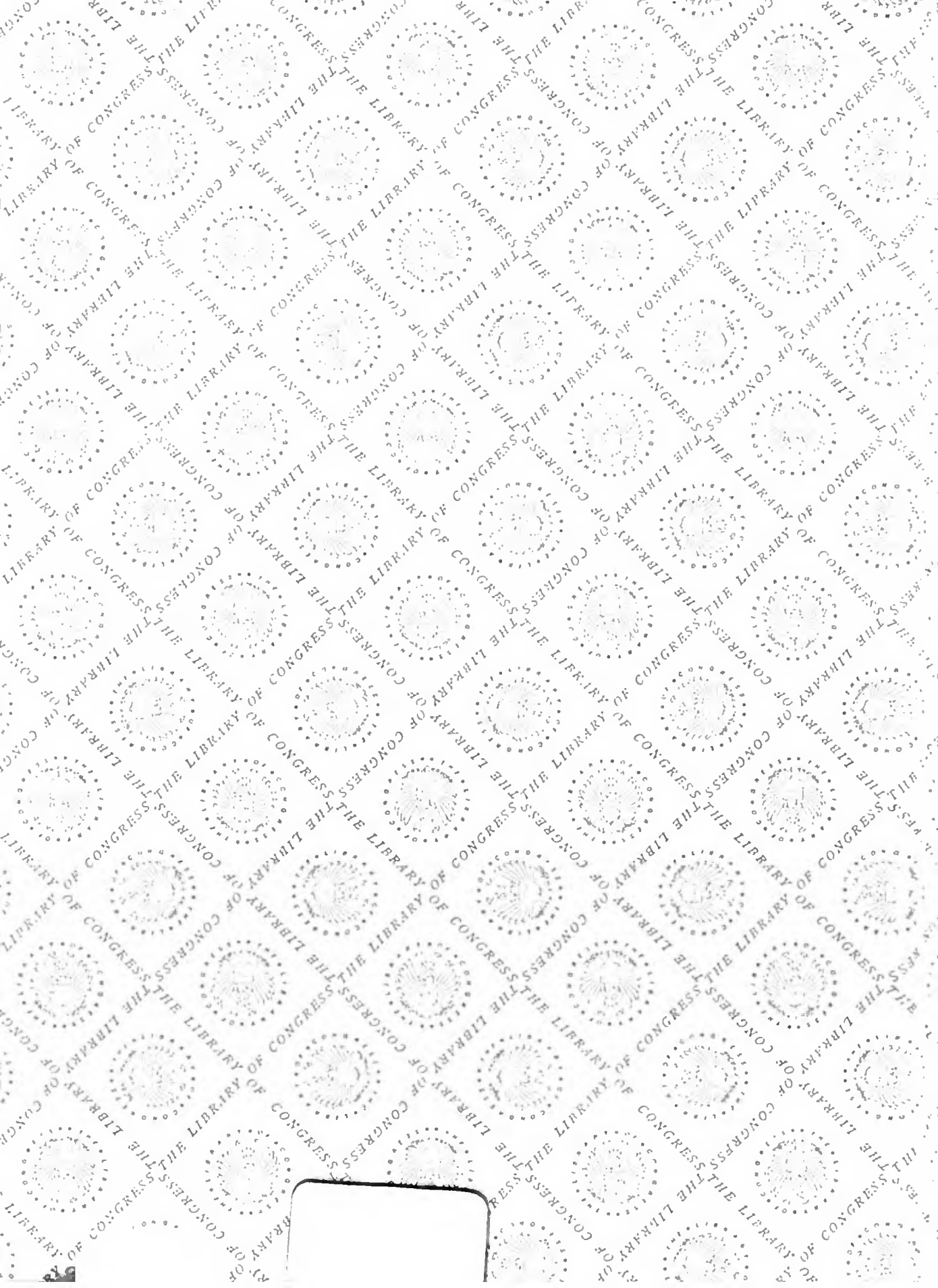

STATEMENT OF INFORMATION SUBMITTED ON BEHALF OF PRESIDENT NIXON

HEARINGS

BEFORE THE

COMMITTEE ON THE JUDICIARY

HOUSE OF REPRESENTATIVES

NINETY-THIRD CONGRESS

SECOND SESSION

PURSUANT TO

H. Res. 803

A RESOLUTION AUTHORIZING AND DIRECTING THE COMMITTEE ON THE JUDICIARY TO INVESTIGATE WHETHER SUFFICIENT GROUNDS EXIST FOR THE HOUSE OF REPRESENTATIVES TO EXERCISE ITS CONSTITUTIONAL POWER TO IMPEACH RICHARD M. NIXON PRESIDENT OF THE UNITED STATES OF AMERICA

Book II

DEPARTMENT OF JUSTICE-ITT LITIGATION

MAY–JUNE 1974

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RICHARD M. NIXON

PRESIDENT OF THE UNITED STATES OF AMERICA

Book II

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MAY–JUNE 1974

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FOREWORD

By Hon. Peter W. Rodino, Jr., Chairman
Committee on the Judiciary

On February 6, 1974, the House of Representatives adopted by a vote of 410-4 the following House Resolution 803:

> RESOLVED, That the Committee on the Judiciary acting as a whole or by any subcommittee thereof appointed by the Chairman for the purposes hereof and in accordance with the Rules of the Committee, is authorized and directed to investigate fully and completely whether sufficient grounds exist for the House of Representatives to exercise its constitutional power to impeach Richard M. Nixon, President of the United States of America. The committee shall report to the House of Representatives such resolutions, articles of impeachment, or other recommendations as it deems proper.

On May 9, 1974, as Chairman of the Committee on the Judiciary, I convened the Committee for hearings to review the results of the Impeachment Inquiry staff's investigation. The hearings were convened pursuant to the Committee's Impeachment Inquiry Procedures adopted on May 2, 1974.

These Procedures provided that President Nixon should be afforded the opportunity to have his counsel present throughout the hearings and to receive a copy of the statement of information and related documents and other evidentiary material at the time that those materials are furnished to the members.

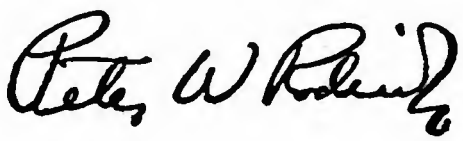
Mr. James D. St. Clair, Special Counsel to the President, was present throughout the initial presentation by the Impeachment Inquiry staff. Following the completion of the initial presentation, the Committee resolved, in accordance with its Procedures, to invite the President's counsel to respond in writing to the Committee's initial evidentiary presentation. The Committee decided that the President's response should be in the manner of the Inquiry staff's initial presentation before the Committee, in accordance with Rule A of the Committee's Impeachment Inquiry Procedures, and should consist of information and evidentiary material, other than the testimony of witnesses, believed by the President's counsel to be pertinent to the inquiry. Counsel for the President was likewise afforded the opportunity to supplement its written response with an oral presentation to the Committee.

President Nixon's response was presented to the Committee on June 27 and June 28.

One notebook was furnished to the members of the Committee relating to the Department of Justice - ITT litigation. In this notebook a statement of information relating to a particular phase of the investigation was immediately followed by supporting evidentiary material which included copies of documents and testimony (much already on the public record) and transcripts of Presidential conversations.

The Committee on the Judiciary is working to follow faithfully its mandate to investigate fully and completely "whether or not sufficient grounds exist" to recommend that the House exercise its constitutional power of impeachment.

Consistent with this mandate, the Committee voted to make public the President's response in the same form and manner as the Inquiry staff's initial presentation.



July, 1974

CONTENTS

INTRODUCTORY NOTE

The material contained in this volume is presented in two sections. Section 1 contains a statement of information footnoted with citations to evidentiary material. Section 2 contains the same statement of information followed by the supporting material.

Each page of supporting evidence is labeled with the footnote number and a description of the document or the name of the witness testifying. Copies of entire pages of documents and testimony are included, with brackets around the portions pertaining to the statement of information.

In the citation of sources, "SSC" has been used as an abbreviation for the Senate Select Committee on Presidential Campaign Activities.

STATEMENT OF INFORMATION

SUBMITTED ON BEHALF

OF THE PRESIDENT

DEPARTMENT OF JUSTICE -- ITT LITIGATION

1. In December, 1968, Richard W. McLaren was interviewed for the position of Assistant Attorney General, Antitrust Division, Department of Justice, by John N. Mitchell and Richard G. Kleindienst. As a condition to his acceptance of that position, Mr. McLaren insisted that antitrust enforcement decisions would be based solely on the merits of any given situation.

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memorandum allegedly written by Mrs. Dita Beard. Mr. Hume asked whether the subject of that memorandum had entered into my conversations with the Justice Department. I flatly denied that anything having to do with the Sheraton commitment had ever been discussed by me with Mr. Kleindienst or any other representative of Justice.

Let me say now that I do not know Mrs. Beard and, in fact, had never heard her name before talking with Mr. Hume. Moreover, I never knew of an ITT commitment of the San Diego Convention Bureau until December 1971, when I read about it in the public press. This was 6 months after the antitrust settlement had been reached. Therefore, it was literally impossible for me to have participated in any conversation regarding the commitment.

The settlement requires, so far as I know, the largest divestment in the history of world enterprise comprising companies with sales approximating $1 billion in assets. Even apart from forced sale, I can think of no case in which a single owner voluntarily parted with values of this magnitude. As a director of the company, I considered this an extremely harsh settlement, arrived at after protracted and difficult negotiations between representatives of Justice and ITT.

If I may, sir, for the record, I would like to place the dates of my meetings with Mr. Kleindienst.

The first one took place on April 20, 1971, where I gave orally some of the policy considerations we thought relevant. Mr. Kleindienst stated that since the Attorney General had disqualified himself, the ultimate decision with respect to any litigation would necessarily be his. He said too he would make that decision based on Mr. McLaren's Antitrust Division recommendations, and told me any presentation should be made to Mr. McLaren and the Antitrust Division.

The next meeting took place on April 29.

This was followed by the meeting of May 10.

The next meeting was June 29.

The last meeting was July 15.

Thank you, Mr. Chairman.

The CHAIRMAN. Judge McLaren, you say you were solely responsible for this settlement, with your staff?

Mr. MCLAREN. I'm sorry. I couldn't hear the last sentence.

The CHAIRMAN. Did I understand you to say that you were, you and your staff were solely responsible for this settlement?

Mr. MCLAREN. That is my testimony, yes, sir.

The CHAIRMAN. Now, did you know anything about a $400,000 contribution from ITT to the city of San Diego?

Mr. MCLAREN. Absolutely not. I knew nothing about any of this whole business, or even that the convention was going there until I read about it in the newspapers where someone tried to make a connection between an alleged payment and the settlement of the case.

The CHAIRMAN. Now, did Mr. Kleindienst, Mr. Mitchell, or anyone else attempt to influence your decision in this settlement?

Mr. MCLAREN. The direct answer to your question is "No, they did not." I would like to add this: when I was first interviewed by Mr. Mitchell and Mr. Kleindienst in the Pierre Hotel in December of 1968 with regard to coming down here, I had an understanding with them

when they offered me the job. I made three conditions: that we would have a vigorous antitrust program; that we would follow my beliefs with regard to what the Supreme Court cases said on conglomerate mergers, and the restructuring of the industry that I thought was coming about in an almost idiotic way; and third, that we would decide all matters on the merits, there would be no political decision.

The CHAIRMAN. Now, is that correct in this case?

Mr. MCLAREN. That is correct in this case, absolutely. I might add that the Attorney General and Mr. Kleindienst lived up to their commitment.

The CHAIRMAN. Senator Ervin.

Senator ERVIN. As I construe your testimony, Judge McLaren, Mr. Kleindienst did not actively participate in the negotiation of the settlement at all?

Mr. MCLAREN. All Mr. Kleindienst did was arrange that one meeting, as far as I am concerned. And during the course of that meeting, when ITT mades its presentation, I was the chairman of the meeting. Mr. Kleindienst sat off on my left, and listened, so far as I recall, and, well, none of us had much to say, but he did not do really anything in any stage of the negotiations except arrange for that one meeting and approve my proposal for settling the thing after I became convinced that the 250-odd-thousand shareholders of ITT would suffer more than a $1 billion loss if we proceeded and were successful in forcing divestiture of Hartford.

Senator ERVIN. Did he make any suggestion to you as to what the details of the negotiations should be, or what the details of the settlement should be?

Mr. MCLAREN. He did not, and I did not even keep him informed as to what we were doing in the negotiations until—I think he is probably right—I telephoned him the night before we actually put the thing out and said I think that they are going to cave in on the last couple of points and we will probably announce it tomorrow.

The CHAIRMAN. And that was the course you usually followed to keep him advised of matters in your department?

Mr. MCLAREN. Matters of major importance, yes, sir.

Senator ERVIN. I understand from the testimony that has been given that Attorney General Mitchell absolutely disqualified himself from any connection with these suits and proposed suits, and with the negotiations on the settlement, on the grounds that his firm at one time had represented one of the affiliates of ITT?

Mr. MCLAREN. Yes, sir, that is correct.

Senator ERVIN. In other words, your testimony is that you and the members of the Antitrust Division staff conducted the investigations, and that the decision of the Government was based solely on the opinions which you and the members of your staff in the Antitrust Division had after considering all of the matters involved, and all of the implications of those matters?

Mr. MCLAREN. That is right, sir.

Senator ERVIN. Now, Judge, I practiced law a long time, and I have participated in compromises in many cases, never one of any great magnitude, but my experience is that when people settle litigation they do so for approximately the same reason that Hamlet stated in his soliloquy: they are uncertain as to what the courts are going to

and that anybody else in my Department who has been here, even though we might have made mistakes of judgment, have not been guilty of any improper or illegal conduct, and as I have had to ask myself many a time, Senator Mathias, since that fateful day that I first appeared, should I have done what I did, I will say to you and to the members of the U.S. Senate that had I to do it over again, knowing that these last 2½ months would have transpired, I would have come before you under the same circumstances and said, "Take a look at our conduct and let's have this hearing," and I have no regrets about it one way or another.

Senator MATHIAS. Mr. Kleindienst, as you know, we are sifting through this record with a very fine comb; and so that we don't leave the record incomplete, I would like to call your attention to one other statement that I think you might want to comment on. I suspect that the answer you have just given, which I think is a very full answer, may apply to this, but just so that the record is complete, which is, I think, for your benefit as well as for the benefit of the committee, let me read this paragraph to you which appears on page 100:

> That is, in substance and in effect, the relationship that I had with I.T. & T. and the Department of Justice in connection with the antitrust matters of that corporation before our Department. I had no discussions with any other officer or attorney or agent on behalf of I.T. & T. I had no discussions with anybody on Mr. McLaren's staff and the other persons. The only person with whom I ever discussed the matter within the Department was Judge McLaren, the person making the recommendation and handling the situation.

Now, again, I draw your attention to that with the thought in mind that what is important, really, to the committee is what got through to you, the messages that got through to you, and the casual, the accidental, things which occur in everyone's life sometimes make an impact and sometimes don't.

Would you still stick with the gist of that statement, with the opportunity that you have had for reflection in the meantime?

Mr. KLEINDIENST. Well, without being subject to the accusation that I am—I don't want to throw in the whole kitchen sink—the only thing that got to me, really, was Judge McLaren. I think the judge indicated in his testimony, and I remember so vividly, when Mr. Mitchell and I interviewed him in the Pierre Hotel in New York before his appointment and before the inauguration of the President, when we had narrowed the selection of an Assistant Attorney General for Antitrust down to three people, knowing his background, he said: "I want to tell you one thing. I believe in vigorous enforcement and I want a commitment from the both of you that I will not be interfered with with respect to that enforcement."

He did believe in vigorous enforcement, with courage and with honesty and with great ability; he was not interfered with and I took my guidance in antitrust cases from Judge McLaren. I am a lawyer from Phoenix, Ariz. I never had an antitrust case in my life. He symbolizes the highest kind of lawyer from the private sector who is willing to leave a very lucrative practice and come into the Government and give the people the benefit of his art and his experience. The only thing that got through to me was Judge McLaren.

Felix Rohatyn, whom I have come to regard with a very high degree of regard, made a very persuasive presentation to me but all

2. In 1968, Mr. Nixon appointed a Task Force on Productivity and Competition to review antitrust policy and make recommendations. The task force, headed by Professor George Stigler of the University of Chicago, presented its report to President Nixon on February 18, 1969 and recommended against immediate legal action re: conglomerate mergers.

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om Antitrust and Trade Regulation Report, June 10, 1969]

TEXT OF REPORT OF NIXON TASK FORCE ON PRODUCTIVITY AND COMPETITION

SUMMARY OF RECOMMENDATIONS OF THE TASK FORCE ON PRODUCTIVITY AND COMPETITION

We present here a summary of the recommendations of the Task Force on Productivity and Competition. These recommendations are elaborated and defended in the accompanying Report.

1. We recommend that the President issue a general policy statement (a) establishing the Antitrust Division as the effective agent of the Administration in behalf of a policy of competition within the councils of the Administration and before the independent regulatory commissions; (b) urging those commissions to enlarge the role of competition in their industries; (c) marshaling public support for the policy of competition.

2. We urge the commissions to permit free entry in the industries under regulation and to abandon minimum rate controls, whenever these steps are possible—and we think they usually are; and we urge the President, when occasion permits, to appoint at least one economist to membership in each of the major commissions, and institute effective procedures for the review of the performance of the commissions.

3. To enhance the effectiveness of the Antitrust Division, we urge the Attorney General and the Assistant Attorney General in Charge of Antitrust to insist that every antitrust suit make good economic sense, and to institute semi-public conferences to assist in the formulation and frequent reevaluation of enforcement guidelines.

4. We recommend that the Department of Justice establish close liaison with the Federal Trade Commission at the highest levels, with a view toward fostering a harmonious policy of business regulation.

5. We recommend that the Department bring a series of strategic cases against regional price-fixing conspiracies, which we believe to be numerous and economically important.

6. We cannot endorse, on the basis of present knowledge of the effects of oligopoly on competition, proposals whether by new legislation or new interpretations of existing law to deconcentrate highly concentrated industries by dissolving their leading firms. But we urge the Department to maintain unremitting scrutiny of highly oligopolistic industries and to proceed under section 1 of the Sherman Act—which in our judgment reaches all important forms of collusion—in instances where pricing is found after careful investigation to be substantially noncompetitive.

7. The Department of Justice Merger Guidelines are extraordinary stringent, and in some respects indefensible. We suggest a number of revisions in the accompanying Report.

8. We strongly recommend that the Department decline to undertake a program of action against conglomerate mergers and conglomerate enterprises, pending a conference to gather information and opinion on the economic effects of the conglomerate phenomenon. More broadly, we urge the Department to resist the natural temptation to utilize the antitrust laws to combat social problems not related to the competitive functioning of markets.

9. We recommend new legislation to increase the monetary penalties, at present largely nominal, for price fixing.

10. We urge a new policy for antitrust decrees. The Department should not seek the entry of regulatory decrees: decrees that envisage a continuing relationship with the defendant. Save in exceptional circumstances, all decrees should contain a near termination date, ordinarily no more than 10 years from the date of entry. And the Department should undertake a review of existing decrees to determine which should be vacated as obsolete or inappropriate.

11. The Expediting and Webb-Pomerene Acts should be repealed, and the Robinson-Patman Act substantially revised.

12. Mr. Alexander L. Stott dissents from certain parts of the Report and from certain of the above recommendations. Mr. Raymond H. Mulford dissents from two recommendations.

REPORT OF THE TASK FORCE ON PRODUCTIVITY AND COMPETITION

The Task Force on Productivity and Competition submits its report on the problems which will be confronted by the new administration in this area, and the steps which we recommend to be taken. The report is presented under three general headings:

I. The Administration's policy of Competition and the Role of the Antitrust Division and the Regulatory Commissions in This Policy.

II. Organization and Procedure in the Antitrust Division.

III. Recommendations for Change in Antitrust Policy.

Individual task force members would often change the emphasis of the Report, and larger differences are presented as dissents.

I. General policy

A. Antitrust Policy

The American Way, as we are constantly told, is to rely upon competitive private enterprise to do most of the work of allocating resources to industries and firms, organizing production, and providing economic progress. We are constantly travelling a shorter distance down this Way, however: for good reasons and for bad we have almost continuously expanded the governmental controls over economic life, and in recent years important restrictions have been placed upon private enterprise to protect the balance of payments. Some of the vast arsenal of public controls are unnecessary, and a large proportion of the necessary controls are excessively restrictive of competition. As one example, the safety of financial institutions is of course a major public concern, but this safety can often be achieved by insurance or similar devices, and hardly ever requires that competition be suppressed to the extent that the most incompetently managed institution will be prosperous, and hence safe.

The traditional American policy of seeking to minimize regulation of economic life is a profoundly wise policy, and deserves to be reasserted and implemented. Both logic and political expediency—not always close allies—dictate that economic freedom be subjected to the discipline of competitive markets. We believe, therefore, that the President should issue a general policy statement on competition and public regulation, to achieve at least three important purposes:

1. To establish the Antitrust Division as the effective agent of the Administration in behalf of a policy of competition, in intra-governmental groups, and before independent regulatory bodies.

2. To encourage and urge the regulatory bodies—which cannot ignore the clear policy positions of the President even when his appointive power is dormant—to enlarge the role of competition in their respective industries.

3. To revive and strengthen public support for the policy of competition, and to establish the bona fides of the Administration as the protector of both consumer and businessman.

An executive order or a major presidential address would be an appropriate vehicle for this declaration. Whether or not a formal statement commends itself, we believe that the correct policy is one of persistent and resourceful exploitation of competition wherever possible.

B. The Policy of Competition in the Regulated Industries

Our mandate to examine productivity and competition in the American economy compels us to brief examination of the work of the regulatory commissions themselves. The regulated industries comprise one-eighth or more of the economy in terms of income, and are too important to be omitted from our Report.

The tasks assigned to the regulatory agencies are various: to prevent monopoly pricing (as with telephone and pipelines); to prevent congestion (as with radio and television frequencies); to provide safety to savers (as with financial institutions); and so on. It is not possible for us here to examine these purposes critically, although it is notorious that in certain industries (such as motor trucking) there is no respectable case for economic regulation. There is widespread disenchantment with regulatory purposes as well as regulatory processes, and a general belief that excessive rigidity, expensive review of economically trivial details, and frequent failure to achieve any important results have characterized our regulatory efforts.

In two directions, we are convinced, there should be a major reorientation of the regulatory policy:

1. Entry of new firms should be encouraged wherever an absolute contradiction with regulatory goals is not involved. At present the practice is universally the opposite: to prohibit or ration with utmost severity the entrance of new firms.

2. Allow much freedom in price competition. The regulatory bodies should abandon *minimum* rate regulation whenever possible (and it is usually possible), and rely chiefly on maximum rate regulation.

Where rates are regulated, it is essential to make *both* changes: there is little merit in allowing additional firms to enter if they are not held to the test of unfettered competition with the existing firms.

We urge the Administration to pursue three complementary paths of reform in the regulated industries:

First, the commissions should have the merits of competition pressed upon them. Competition is not a matter of all or none, and the fact of regulation should not exclude competition as a force at each of a hundred points where it is relevant and feasible. If there must be only one railroad there can still be several truckers, several freight forwarders, and the possibility of inter-modal competition.

Second, the primary method of giving a larger role to competition is by appointing commissioners who understand and believe in a policy of competition. *We believe that every regulatory body should have at least one economist as a commissioner.* Quite aside from the implementation of the desire for more competition, this proposal has a decisive defense: economic regulation poses more economic than legal problems, and an economist knows more about economics than a non-economist. The economic triviality and irrelevance of much activity of the regulatory commissions is patent and inexcusable.

Third, the regulatory commissions are largely out of public control. Once in a decade or two, at most, a commission will be investigated by Congress. The Administration should explore methods of getting more meaningful and effective reviews than we now get. We do not know whether the best method is an enlarged Bureau of the Budget section, a national commission, the creation of academic review committees, or a special adviser to the President. The best method, however, is surely not infrequent, partisan Congressional review. The present rule of the

latory bodies is undirected, unmeasured, unevaluated.

1. Organization and procedure in the antitrust division

A. The Utilization of Economic Knowledge

We anticipate little opposition to the proposition that the Antitrust Division make full and effective use of economists and their special skills. These skills are often necessary to understand the effects of economic practices (an example is market-sharing in fixed proportions), to assess the economic importance of individual cases, and to assist in devising remedies that will not shatter on economic realities. We endorse the policy of having a highly professional economist serving as adviser to the head of the Division, and a strong permanent staff of economists.

The problem is not the goal of an economically sophisticated antitrust policy, but its implementation. A division charged with the enforcement of a statute must of course be directed and largely staffed by lawyers. Unless there are substantial incentives to the staff to utilize economics—whether by central direction, or vastly more powerfully, by demonstrated assistance in winning cases—the non-lawyer will often be viewed by the lawyers as a mysteriously necessary obstacle to smooth operations. The Assistant Attorney General will have succeeded in making a truly major contribution to antitrust policy if he establishes the relevance of economic knowledge.

B. The Development of Criteria for Classes of Cases (Guidelines)

When the Antitrust Division is confronted by a large number of similar cases—and it must now be scanning many hundreds each year—it will inevitably have to guide the numerous men who pass on individual cases. The question is not whether to have criteria or guidelines, but how to arrive at them.

We believe, for reasons we discuss below, that the present merger guidelines are questionable in important respects. Here we consider the procedures for formulating guidelines.

A set of rules for a class of cases will be desirable only if two conditions are fulfilled:

1. There are a large number of uncontroversial, easily identified cases. If there are not, the rules give little help to either business or the Division.

2. Controversial or objectionable cases cannot be repackaged to avoid scrutiny.

The way to determine whether mergers, for example, meet these conditions is to examine a large number of them in the light of legal and economic knowledge. The Antitrust Division will perform this task vastly better if it uses the large amount of professional expertise available outside the Division. We therefore recommend that the Division have semi-public conferences to explore difficult areas of policy, inviting legal and economic experts to propose or discuss guidelines. Some members of the task force would prefer to have formal notice and public hearings in establishing rules. If rules are adopted, a periodic review of them by the same procedure will be a useful method of conferring flexibility upon them. A specific application of this method is proposed below for mergers.

C. The Role of the Federal Trade Commission

No review of antitrust policy would be complete that ignored the Federal Trade Commission, which is charged with enforcement, among other statutes, the Clayton Act, which Section 2, the Robinson-Patman Amendment, and Section 7, prohibiting mergers and acquisitions that may substantially lessen competition, are particularly important; and the Federal Trade Commission Act, whose operative provision, Section 5, forbids "unfair or deceptive acts or practices", a term that has been interpreted to embrace even more than the vast area of anticompetitive behavior proscribed by the Sherman Clayton Acts, as well as consumer fraud and some "immoral" sales methods such as lotteries. As is evident, the Commission's jurisdiction largely overlaps that of the Antitrust Division.

In its antitrust work, the FTC has concentrated on price discrimination, on practices believed to oppress or coerce small dealers, and on mergers, especially vertical and conglomerate, and usually in industries which by long-established understanding with the Antitrust Division have been assigned as the Commission's sphere of primary competence.

Unhappily, little that the Commission undertakes in the antitrust area can be defended in terms of the objective of maintaining and strengthening a competitive economy. Consider price discrimination. There is now an impressive body of literature arguing the improbability that a profit-maximizing seller, even one with monopoly power, would or could use below cost selling to monopolize additional markets. Yet, not only has the Commission continued to bring predatory price discrimination cases, but the alleged danger of predatory pricing remains a principal prop of its vertical and conglomerate antimerger cases. As for "secondary line" discrimination (that is, giving discounts to some dealers or distributors but not to others who compete with them), the Commission has never attempted to differentiate those cases (if there are any) in which a monopolistic buyer is able to extract unjustified price concessions from his suppliers to the prejudice of his competitors from those in which discrimination is employed by oligopolistic sellers who wish to cut prices secretly,—and should be encouraged to do so—and those in which price *differences* (which the Commission tends to equate, erroneously, with *discriminations*) are not, in fact, discriminatory. Over the last eight years the Commission, often under the prodding of reviewing courts, has pulled some of the sting from enforcement of the Robinson-Patman against secondary-line discrimination. It has demanded somewhat stronger proof of competitive injury; the meeting-competition and cost-justification defenses have been rendered meaningful; and the provisions of the Act relating to advertising allowances and brokerage payments are, in general, no longer used to compel sellers to compensate for services that are not economically beneficial to the seller (such as advertising by tiny retail outlets or brokerage when a broker's services can be dispensed with). Although the retreat from *per se* rules against secondary-line discrimination has led to a general diminution of enforcement activity by the FTC (private suits continue, of course, and are discussed later) the Commission still brings many cases that impair, rather than promote, competition and efficiency. For example, the Commission has in recent years waged vigorous war against "functional discounts", which are discounts offered to middlemen who perform certain distributive functions (such as warehousing) that other middlemen, who are not given the discounts, do not perform. Moreover, as explained later in this Report, we can conceive of no case of discrimination in which the Sherman Act would not provide an adequate remedy—adequate, that is, to protect the interest in maintaining an effectively competitive economy—and so we view Robinson-Patman enforcement as inherently likely to be pushed beyond proper limits.

The efforts of the Commission to protect small dealers from allegedly unfair and coercive business practices constitute a dark chapter in the Commission's history. Much of this enforcement activity does not eventuate in formal proceedings. What happens is that a dealer who is terminated for whatever reason, is likely to complain to the Commission, knowing that the relevant Commission staff is well disposed toward "small business". The staff uses the threat of an FTC proceeding to get the supplier to reinstate the dealer, and if threats fail—usually they succeed the FTC may file a complaint charging the supplier with having cut off the dealer because he was a price cutter, or for some other nefarious reason. Our impression, in sum, is that the Commission, especially at the informal level, has evolved an effective law of dealer protection that is unrelated and often contrary to the objectives of the antitrust laws. The Commission is supported in this endeavor by the Supreme Court's rulings that Section 5 of the FTC Act empowers the Commission to suppress practices that *resemble* antitrust violations.

With respect to the Commission's enforcement policy in the merger field, it is illuminating to compare the recent statements of Commission merger policy with the Department of Justice Merger Guidelines, discussed elsewhere in this Report. The Commission is even more severe. Unlike the Department, it attaches a good deal of significance to the absolute size (independent of market share) of merging firms; to the alleged power that large firms have over small; and to the dangers of "price squeezes".

It will, for example, challenge virtually *any* acquisition by a cement producer of a ready-mix concrete company, virtually *any* substantial acquisition by a large food chain, etc. The Merger Guidelines are models of restraint compared to those promulgated by the Commission, which are as hard on economic theory as on mergers.

We conclude that substantial retrenchment by the Commission in the antitrust field is highly desirable. In addition to retrenchment (at least by stopping the increase of the Commission's appropriations), its resources devoted to regulating competition might be redeployed. The two principal possibilities are (1) consumer protection, and (2) economic studies utilizing the very broad fact-gathering powers vested in the Commission by its enabling legislation. Unhappily, either route could be followed in a way that endangered competition. An incompetent economic study can be influential on policy makers—witness the influential 1948 FTC study which erroneously suggested that concentration was on the rise in American industry. Overzealous enforcement of consumer-protection legislation can also have errant results. We note that the application of consumer-protection law is almost always invoked not by consumers but by competitors, whose interest lies in protecting their market, not in giving consumers full information; and that elaborate requirements relating to packaging, safety, etc. can curtail consumer choice, limit competition, reduce the consumer's incentive to exercise care, and—what is most serious—impose substantial costs on society.

The Federal Trade Commission urgently needs a basic reform, but this need will be difficult to fulfill. Quite apart from the fact that there are no vacancies on the Commission, any dramatic or far-reaching Presidentially-inspired reforms would run up against the long tradition of regarding the independent agencies in general—and the FTC in particular—as "arms of the Congress." That has at times meant an office of economic opportunity for Congressmen; more important, it means that a strong showing of Presidential interest in the operations of the Commission will not be welcome on the Hill.

Perhaps the best short-run path of improvement runs through the offices of the Attorney General and the Assistant Attorney General in charge of Antitrust. Since the jurisdictions of the Commission and of the Antitrust Division are so largely overlapping, no one could object to the establishment between the Commission and the Division of close liaison at the highest levels. Indeed, it is something of a wonder (though explicable in terms of bureaucratic rivalry) that such

...as been wholly lacking heretofore: ...coordination between the agencies is ...very low levels, and consists largely of haggling over who shall sue in cases where both agencies are interested. Especially at the beginning of a new Administration, it should be quite feasible, as well as wholly appropriate, for the Attorney General and Assistant Attorney General to establish a close cooperative relationship with the Chairman of the Commission. We think it likely that the Commission will pay some heed to the Department's views, if forcefully expressed, on antitrust and trade-regulation policy.

III. Recommended changes in antitrust policies

The general policies of the Antitrust Division are profoundly good, and we propose no major change in its emphasis or directions of policy. In fact, the main thrust of the following recommendations is that certain recent developments of policy or doctrine should not be allowed to divert the agency from its basic task of striking down conspiracies and mergers in restraint of trade.

A. Price Fixing

The price-fixing cases of the Antitrust Division are its bread and butter, and understandably its staff would prefer more cake. We emphasize the great economic and social importance of continued, vigilant, aggressive seeking-out and conviction of conventional price-fixers. Every victory weakens the efficiency of undetected collusion in that area of economic life. We strongly recommend the bringing of a series of strategic cases against regional conspiracies, which we believe to be numerous and economically important.

B. Concentration and Oligopoly

O...poly—the industry composed of a l...number of independent enterprises—...oubtedly presents the most difficult problems in e policy for competition. The difficulties arise because of a combination of three circumstances. The first is *factual*: there are many important industries in our economy whose structure is oligopolistic—how large a number depends upon what a "small number of firms" means. The second is *interpretive*: the economists have not succeeded in fully identifying the characteristics of an industry which determine whether it will behave competitively or monopolistically. The third is the matter of *action*: if firms in an oligopolistic industry are convicted of collusive behavior, must one press for e remedy so radical as dissolution in order to stop future repetitions of the offense? (And should the standards of permissible concentration be wholly different for pending mergers then for established enterprises?)

The circumstances which determine whether or not the firms in an oligopolistic industry will usually behave more or less competitively (seeking by independent actions to improve their individual profits at the cost of rivals' profits, with the eventual general erosion of unusual profits) are partly known:

1. The easier (quicker and cheaper) new firms can enter the industry, the smaller and more short lived will be the monopolistic restrictions.

2. The more elastic the demand for the product of the oligopolistic industry the less the reward from restrictions of output below the competitive level, and hence the less the inducements to act collusively. This in turn usually depends upon what alternative products the buyers may turn to.

3 ...e larger the effective number of firms ...the probability of collusive be...—collusion increases in expense (in...ing probability of detection) as num...bers increase. However, a given number of firms is more likely to result in collusion, the more concentrated is production in the hands of a few firms. If we correct for this and take the effective number of rivals to be the number of rivals of equal size which would produce the same competitive situation as the firms (not of equal size) actually in the industry, the effective number may be very roughly estimated at twice the number there would be if all firms were as large as the largest in the industry.

That is, if the largest firm has ⅓ of the industry's output and the remaining firms fall off in size regularly, the effective number of firms is of the order of magnitude of 10. By this is meant that the concentration in the industry is equivalent to what would exist if there were 10 firms of equal size.

There are other influences which probably but less certainly affect the probability of competitive behavior. One of these is the size of buyers: larger buyers, for a variety of reasons including possibility of backward integration, make for more competitive prices.

Numerous statistical studies have been made of the relationship between concentration and rates of return on investment, and these studies generally yield positive but loose relationships: concentration is not a major determinant of differences among industries in profitability, although it may sometimes be a significant factor. It appears also to be true that somewhere between five and ten *effective* rivals (i.e., largest firm with a share of ⅓ to ⅕) are usually enough to insure substantial elimination of the influence of concentration upon profitability.

Concern with oligopoly has led to proposals to use the antitrust laws (perhaps amended) to deconcentrate highly oligopolistic industries by dissolving their leading firms. We cannot endorse these proposals on the basis of existing knowledge. As indicated, the correlation between concentration and profitability is weak, and many factors besides the number of firms in a market appear to be relevant to the competitiveness of their behavior. While a flat condemnation of oligopoly thus seems to us unwise, we commend to the Antitrust Division a policy of strict and unremitting scrutiny of the highly oligopolistic industries. If, in any of these industries, pricing is found after careful investigation to be substantially noncompetitive, the Division will have a clear basis for proceeding against the leading firms under Section 1. Collusion that can be incontrovertibly inferred from behavior (such as persistent, stable price discrimination in the economist's sense) should not bring immunity from the Sherman Act, and we are confident that structural remedies will be sanctioned by the courts in cases where, due to number of firms and the other conditions of the market, lesser remedies are likely to be unavailing. In assessing the gain from such structural remedies, account should be taken of any reduction in efficiency which the remedy entails.

The concern with oligopoly is also quite visible in the Department of Justice's most recent innovation, the Merger Guidelines, to which we now turn.

C. Mergers and the Guidelines

The present merger Guidelines impose stringent restrictions upon the relative sizes permitted to companies which desire to merge. The impact of these percentages is reinforced by a definition of the market (within which shares of companies are reckoned) so loose and unprofessional as to be positively embarrassing. We propose to reverse this emphasis: not to tell companies which mergers are forbidden, but which mergers are permitted. We are persuaded that this orientation better serves the interests of both business and the Antitrust Division. Before we turn to the methods by which more appropriate Guidelines for mergers are achievable, we shall briefly discuss the present Guidelines, and indicate our reasons for dissatisfaction with them in their present orientation.

Market Definition. The delineation of a relevant market within which to appraise the lawfulness of a merger is crucial, for if the market is drawn narrowly enough, virtually any merger can be made to seem monopolistic in its effects. Unfortunately, as they are presently drafted the Guidelines seem to invite a substantial degree of market gerrymandering, especially in delineating regional or local markets. The Guidelines' test of whether a product is sold in less than a national market is loose. Any group of competing sellers in the industry is a relevant market, unless the defendant can show that there is no "economic barrier" preventing other sellers from selling in the particular area. Such a barrier may consist of freight costs, customer inconvenience, customer preference for the brands presently sold in the area, or the absence of good distribution facilities.

This is a misleading test. An industry may be riddled with the kind of "barriers" cited in the Guidelines and yet still not contain any meaningful local markets. An example will illustrate. Assume that the price of steel bars is $2 in Minnesota and $1.60 in Chicago, and the cost of shipping the bars from Chicago to Minnesota is 41 cents. On these facts, it is plain that the Minnesota sellers could not raise their price significantly without immediately losing their business to the Chicago sellers. Minnesota is thus not a meaningful local market even though, at the existing price, freight costs do impose an effective economic barrier against the Minnesota sellers. Moreover, additional firms will establish production or distribution facilities in Minnesota if it becomes profitable to do so. The same analysis can be extended to the other barriers discussed in the Guidelines.

In criticizing the test of "economic barrier", we do not mean to deny the difficulty of devising rules of market definition that will be at the same time simple and sensible. This is most probably not an area in which Guidelines provide a useful enforcement tool. If there are to be Guidelines, though, they should at least not misstate the applicable economic theory. It would, accordingly, be a decided improvement if the Guidelines were revised (at a minimum) to explain that a distant seller of a product must be included in the local market if a modest price increase in the local area—a price increase unrelated to his costs—would bring him in forthwith.

Horizontal Mergers. The provisions of the Guidelines governing horizontal mergers—that is, mergers between direct competitors—are extraordinarily strict. If a market is "highly concentrated" (defined as where the 4 largest firms account for at least 75 percent of the sales in the market), then a merger between two firms, each of which has a 4 percent market share, will be challenged; and if the acquiring firm has a share as large as 15 percent, then the acquired firm need have only a 1 percent share for the merger to be challenged. Different levels of permissible size are stated for less concentrated industries, and some account is taken of the trend of concentration.

We agree with the basic premise of the horizontal-merger provisions of the Guidelines that market-share percentages are the appropriate touchstone of illegality for such mergers. We would favor levels of concentration modestly lower than those now used (but differently structured), with the purposes of (1) allowing all mergers below the Guidelines levels, and (2) not prohibiting, but reviewing, those above the critical level, with an implied probability that the more a proposed merger lies above the level of automatic approval, the less the probability of its acceptance. We discuss below the procedure that should be followed better to utilize existing knowledge in fashioning the Guidelines.

Vertical Mergers. A merger that involves the acquisition not of a competitor but of a

mer or a supplier is a vertical merger. The present Guidelines contain strict provisions limiting such mergers. For example, if the supplying firm in the merger has a 10 percent share of its market and the purchasing firm has 6 percent of the purchases in that market, the merger will be challenged.

Our task force is of one mind on the undesirability of an extensive and vigorous policy against vertical mergers: vertical integration has not been shown to be presumptively noncompetitive and the Guidelines err in so treating it. Within this area of agreement there are two positions around which the task force members cluster.

The one position asserts that many, and perhaps most, vertical mergers which do not have direct horizontal effects are innocuous, but that in certain situations a vertical merger will have anti-competitive effects. These situations include: increases in the capital or other requirements for an integrated firm may reduce the possibility of new entry; or price discrimination may be implemented when a monopolist integrates forward or backward. A showing that an anticompetitive effect of these sorts exists is essential before a vertical merger is challenged.

The other position denies that a vertical merger has the potentiality for economic harm in the absence of horizontal effects. To some of our members, it is wholly implausible that vertical integration places entering firms at a disadvantage. A seller who fails to minimize his input and distribution costs will be undersold by his competitors: he cannot afford to sell to or buy from an affiliate if there are more efficient native means of supply and distribution available to his competitors (and to him). Even if the seller is a monopolist, the desire to maximize profits will lead him to seek the most efficient methods of supply and distribution, and there will be ample opportunities for non-affiliated suppliers and outlets to compete for his patronage. Except in the case of the monopolist who cannot discriminate in price effectively without control of his outlets, vertical integration will be initiated and maintained only if and so long as it is justified by the cost savings it permits. It is not a method of extending monopoly power.

The two positions coalesce on one policy conclusion: vertical mergers should not be forbidden as a class.

The Conglomerate Merger. The large conglomerate enterprise with an aggressive acquisition policy has only recently become prominent and newsworth. • • •

Antitrust law has seemed to some a convenient weapon with which to attack large conglomerate mergers. If one interprets "elimination of potential competition," "reciprocity" and "foreclosure" as threats to competition, one can always bring and usually win a case against the merger of two large companies, however diverse their activities may be. These are often makeweights. The economic threat to competition from reciprocity (reciprocal buying arrangements) is either small or nonexistent: monopoly power in one commodity is not effectively exploited by manipulating the price of an unrelated commodity. The argument advanced against the simplistic treatment of vertical mergers—essentially that one cannot use the same monopoly power twice—also challenges the fears of reciprocity.

Potential competition, on the contrary, can be a decisive limitation on the exercise of market power, and a merger which eliminates an imminent new competitor is anticompetitive. If entry into a field is relatively easy, however, there are a vast number of potential entrants and the elimination of one or a few has no effect. If entry is difficult, and only a select few firms are capable of entry and on the record likely to enter, their independence should be preserved. The identity of potential entrants should not be established by introspection. If the producer of X is truly a likely entrant into the manufacture of Y, the likelihood will have been revealed and confirmed by entrance into Y of other producers of X (here or abroad), or by the entrance of the firm into markets very similar to Y in enumerable respects.

We seriously doubt that the Antitrust Division should embark upon an active program of challenging conglomerate enterprises on the basis of nebulous fears about size and economic power. These fears should be either confirmed or dissipated, and an important contribution would be made to this resolution by an early conference on the subject. If there is a genuine securities market problem, probably new legislation is necessary. If there is a real political threat in giant mergers, then the critical dimension should be estimated. If there is no threat, the fears entertained by critics of the conglomerate enterprises should be allayed. Vigorous action on the basis of our present knowledge is not defensible.

The central task of the Antitrust Division is to preserve competition in the American economy. This is a splendid and challenging task and deserves and requires the full resources of the Division. We shall be much the losers if we compromise the discharge of this central task by burdening the Division also with tasks such as the combatting of organized crime or the achievement of general political goals.

The Use of Conferences. We have proposed that conferences be used to revise the Guidelines and to identify the problems, if any, created by the large conglomerate enterprise. The conference will allow the Antitrust Division to utilize the expertise and wide factual knowledge of economists, lawyers, securities analysts, and other groups without the laborious machinery of formal hearings. We strongly recommend that before such conferences are held, leading students and exponents of particular positions be asked to prepare position statements which present explicit and specific theories and evidence. Then the conference members will have specific questions to address and specific views to combat or support.

D. Antitrust Sanctions

The cutting edge of law is not the abstract statement of a legal duty but the sanction provided for its nonperformance, and that is true of the antitrust laws as of other systems of legal obligation. It is essential that those laws clearly and accurately define and forbid the practices that impair competition and efficiency but it is equally essential that the sanction for violation be effective in compelling compliance and with a minimum of undesirable side effects.

In testing the antitrust sanctions by this standard, it will be helpful to distinguish two purposes of sanctions: that of preventing (or, if it has already occurred, undoing) a specific violation; and that of deterring violations that might not always be detected.

Sanctions of the first type—remedial sanctions—suffice where there is no problem of detection (e.g., in the case of an illegal merger). But take the case of price-fixing. Price-fixing conspiracies can be, and one suspects are, successfully concealed. A sanction that merely prevented the continuation of the conspiracy, such as an injunction, or one that merely restored the losses of the injured consumers, such as ordinary damages, would in these circumstances probably be insufficient. For in deciding whether to comply with the law, a seller would discount the very modest (or negligible) injury to him if his participation in a price-fixing conspiracy was detected, and he was required to stop and to pay actual damages, by the considerable probability that he would escape detection altogether; and he could conclude that he had little to lose by participating. That is why punishment by fine or imprisonment is an appropriate sanction for illegal price-fixing; it provides deterrence, as the purely remedial sanction does not.

But the deterrent sanction in antitrust is weak. A price fixer can be imprisoned and fined but prison terms are almost never imposed in price-fixing cases and when they are, they are nominal in length; and the maximum fine of $50,000 will deter only a very small corporation. The possibility of a private treble-damage suit doubtless provides additional deterrent effect, but there are serious limitations: judges are reluctant to authorize damage awards that seriously hurt a company; damages are difficult to prove in price-fixing cases; and most important, the injury caused by a price-fixing conspiracy is often so widely diffused (for example, among millions of consumers) that no one has an incentive to bring a suit. The government itself can sue for damages only when it was the victim of the unlawful conspiracy.

If concealable offenses under the antitrust laws are to be effectively deterred, either the resources devoted to the detection of such offenses must be vastly augmented—and there are obvious limitations to this route—or the fines must be increased to a point where they will give even the large corporation considerable pause before participating in (or condoning its officers' individual participation in) an illegal conspiracy. Precedent for much more severe sanctions can be found abroad. The European Economic Community, for example, may impose penalties of up to $1,000,000, or, in the case of willful violations, up to 10 percent of annual sales. We have not attempted to determine the appropriate level of antitrust fines, but we urge the Department of Justice to accord high priority in its legislative program to the upward revision of these penalties.

The creation of a more realistic scheme of antitrust fines would enable a long-overdue reexamination of the punitive aspects of the private antitrust suit. It is anomalous that private plaintiffs who have done nothing to uncover or prove an antitrust violation (the usual case) should be permitted to claim treble damages on the basis of a judgment obtained by the Antitrust Division. In such circumstances, the excess over actual damages and costs represents a pure windfall to the private plaintiff. Today, one can defend this arrangement on the ground that it furnishes an element of added deterrence which is necessary in light of the inadequacy of the existing criminal fines. But that ground would be removed if the fines were revised to a more appropriate level; and a more rational scheme of deterrence would become feasible. We are also deeply concerned that private treble damage suits provide undesirable opportunities for harassment and the furtherance of a variety of anticompetitive practices.

With regard to remedial sanctions, the principal question involves the undesirable side effects that frequently accompany a poorly formulated decree. Ideally—and it is an attainable ideal—an antitrust decree should be a "one shot" affair: dissolving the monopoly, or divesting the acquired assets, or terminating the basing-point system, etc. The antitrust laws were never intended to be a system of continuing regulation. Antitrust policy has as its basic principle the preservation of a competitive environment within which individual enterprises are free from continuing supervision. When a decree says, in effect, "Let us return to the court, or give the power to the Antitrust Division, to adjudge the propriety of various behavior of the defendant for years to come," one can be sure that the suit has failed in its purpose of restoring competitive conditions. Nor is

Department equipped to function as a regulatory agency, and it is not likely to escape that common pitfall of economic regulation, the suppression of competition. Nonetheless, such decrees are frequently entered, especially by consent of the parties in cases where the Department (or the Federal Trade Commission, to which these remarks apply with equal, if not greater, force) is unsure of its litigation prospects and wishes to salvage something from the investment of enforcement resources.

For the future, we urge that the Department adopt a firm policy of not proposing or accepting decrees that envisage a continuing, regulatory relationship with the defendant. A correlative policy that we suggest is that every decree contain a definite—and near—termination date, ordinarily no more than 10 years from the date the decree is entered. Such a principle would compel the Department to devise decrees that restore competition rather than establish regulation, as well as assure that decrees do not remain in effect long after the relevant industrial conditions have changed (such as with the 1920 decree against the meat packers).

Little is known of the extent to which a large number of past decrees are still operative, and if operative, of any real value in protecting competition. We recommend, therefore, some such procedure as this in dealing with outstanding decrees:

1. The past decrees still running should be compiled, and the types and duration of prescribed conduct summarized.

2. The current relevance of the decrees, or at least those running against large industries, should be examined—presumably by the economics section of the Antitrust Division.

3. The older (say 25 years and over) and obsolete younger decrees should be vacated.

E. Recommended Changes in Antitrust Statutes

Several legislative reforms could improve substantially the functioning of the antitrust laws. We have recommended above a substantial increase in the maximum level of fines. In addition, we recommend immediate repeal of the Expediting Act. The low quality of many Supreme Court antitrust opinions can be traced in no small measure to the fact that direct appeal frequently requires the Supreme Court to pass on an extensive record without the benefit of the winnowing and focusing process involved in an intermediate appeal. The Supreme Court itself has noted that direct appeal is unsatisfactory. If repeal is politically impossible, then an amendment that would drastically limit the number of direct appeals would be desirable.

The Webb-Pomerene Act should also be repealed. The creation of cartels in foreign commerce is antithetical to the underlying theory of the Sherman Act. The danger that exempted cooperation between competitors in the export field will lead to illegal cooperation at home is too great to be viewed as merely a potential abuse. Nothing in U.S. domestic competition policy or foreign economic policy warrants the retention of this outmoded approach to international competition.

On the agenda for long-term legislative reform must be the Robinson-Patman Act. The Act leads to rigidity in distribution patterns and to uniform, inflexible pricing. In industries with few sellers, price reductions are more likely to be made if they can be made covertly. Such limited reductions often lead over time to generally lower prices. Thus, a prohibition against price discrimination may preclude the kind of competition that is most likely to lead to lower prices in oligopolistic industries. We view the Federal Trade Commission's tendency in recent times to relax the enforcement of the Act as a desirable but, so long as private treble damage actions are available, an inadequate reform.

In reforming the Robinson-Patman Act, two kinds of amendment are desirable. First, the general prohibition against price discrimination in Section 2(a) should be made more supple by broadening the meeting competition and cost justification defenses so as to make them more readily available for sellers whose price differentials do not stem from a predatory purpose and do not injure competition in the market place (as opposed to disadvantaging individual firms. Second, the more absolutist brokerage, payments and services prohibitions of subsections (c), (d) and (e) should be repealed while making clear that the standards of amended subsection (a) remain applicable to practices that would previously have been treated under those repealed subsections. The Task Force recognizes the political support that the Robinson-Patman Act retains in some quarters and the danger that an attempt to amend the Act might give particular interests an opportunity to add even more restrictive provisions. As a consequence some of our members view amendment of the Act as a long-term, albeit important, reform others wish to leave it alone.

THE WHITE HOUSE

The ITT Anti-Trust Decision

In the thousands of pages of testimony and analysis regarding the ITT case since 1971, the only major charge that has been publicly made against President Nixon is that in return for a promise of a political contribution from a subsidiary of ITT, the President directed the Justice Department to settle antitrust suits against the corporation.

That charge is totally without foundation:

-- The President originally acted in the case because he wanted to avoid a Supreme Court ruling that would permit antitrust suits to be brought against large American companies simply on the basis of their size. He did not direct the settlement or participate in the settlement negotiations directly or indirectly. The only action taken by the President was a telephoned instruction on April 19, 1971 to drop a pending appeal in one of the ITT cases. He rescinded that instruction two days later.

-- The actual settlement of the ITT case, while avoiding a Supreme Court ruling, caused the corporation to undertake the largest single divestiture in corporate history. The company was forced to divest itself of subsidiaries with some $1 billion in annual sales, and its acquisitions were restricted for a period of 10 years.

-- The President was unaware of any commitment by ITT to make a contribution toward expenses of the Republican National Convention at the time he took action on the antitrust case. In fact, the President's antitrust actions took place entirely in April of 1971 -- several weeks before the ITT pledge was even made.

I. President's Interest in Anti-Trust Policy

Mr. Nixon made it clear during his 1968 campaign for the Presidency that he stood for an antitrust policy which would balance the goals of free competition in the marketplace against the avoidance of unnecessary government interference with free enterprise. One of Mr. Nixon's major antitrust concerns in that campaign was the Government's treatment of conglomerate mergers. Conglomerates had become an important factor in the American economy during the 1960's, and despite

public fears that they were threatening free competition in the marketplace, the administrations of those years -- in Mr. Nixon's opinion -- had not been clear in their attitude toward them. In one of his 1968 campaign books, Nixon on the Issues, in which he put forward in summary form his conclusions about national and international issues, Mr. Nixon expressed his dissatisfaction with existing conglomerate policies:

> "The Department of Justice has recently proposed guidelines for 'conglomerates' but the guidelines have not provided any substantial criteria on which businessmen can safely depend. Moreover, there is the problem of unsettled case law on the question. My administration will make a real effort, and a successful one, I believe, to clarify this entire 'conglomerate' situation...

To help resolve the issues involved, Mr. Nixon during his campaign appointed a Task Force on Productivity and Competition, headed by Professor George Stigler of the University of Chicago and including several eminent academicians. The task force presented its report to the newly inaugurated President on February 18, 1969. The group recognized public fears that conglomerates posed a "threat of sheer bigness" but said these fears were "nebulous" and should not be converted into an aggressive antitrust policy on the basis of knowledge then available. "We strongly recommend," stated the report, "that the Department (of Justice) decline to undertake a program of action against conglomerate enterprises..."

A similar view was set forth by many outside the Government. In an article in Fortune in September of 1969, Robert Bork, then a professor of antitrust law at the Yale Law School, attacked the policy of antitrust enforcement against conglomerates that he thought was emerging at the Justice Department. He noted that unless conglomerates mergers were involved in horizontal price-fixing within an industry, there was no economic foundation for believing that they were anti-competitive. He also noted that "The campaign against conglomerate mergers is launched in the teeth of the conclusion reached by the task force that President Nixon himself appointed to study and report on antitrust policy."

A second major concern of the President and his advisors was their fear that the ability of U. S. companies to compete in the world market might be threatened by antitrust actions against conglomerates. The United States faced a shrinking balance of trade surplus and the President and many of his advisors felt that U. S. multi-national companies could play an important role in improving the balance.

The President feared that antitrust action against those companies which was based upon something other than a clear restraint of trade would render them less able to compete with the government-sheltered and sponsored industrial giants

2C. REMARKS OF HAROLD GENEEN, JUNE 26, 1969, ANNUAL MEETING OF ITT SHAREHOLDERS, 8-9

REMARKS BY MR. HAROLD S. GENEEN, CHAIRMAN AND PRESIDENT INTERNATIONAL TELEPHONE AND TELEGRAPH CORPORATION, AT 1969 ANNUAL MEETING OF ITS STOCKHOLDERS -- SHERATON-CADILLAC HOTEL, DETROIT, MICHIGAN ON JUNE 26, AT 2 P.M.

Ladies and Gentlemen:

On behalf of the Board of Directors and Officers I want to welcome you to your 49th Annual Meeting.

This is our first meeting to be held in Detroit which reflects our policy to bring ITT to the stockholders throughout the country's economic and financial centers.

During the past 10 years we have brought our Annual Meeting to Baltimore, San Francisco, New York, Boston, Philadelphia, Cleveland, Los Angeles, Atlanta, Denver, and today -- Detroit.

Today's meeting also has a special historic significance for the Company -- today's meeting is the first official meeting at the beginning of its 50th Anniversary Year.

Turning back now to Detroit and the State of Michigan, this is an area that has increasing significance to ITT. We are represented in the area by 19 of our major divisions which provide a variety of services and more than 20 product lines.

We are clients of Detroit's great banks and financial institutions and major purchasers of its products. The annual dollar volume of our own activities in this area alone would total well over $100 million.

Among the better known of our activities in the Detroit area are:

Thompson Industries, suppliers to the automobile trade....

2. In 1968, Mr. Nixon appointed a Task Force on Productivity and Competition to review antitrust policy and make recommendations. The task force, headed by Professor George Stigler of the University of Chicago, presented its report to President Nixon on February 18, 1969 and recommended against immediate legal action re: conglomerate mergers.

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3. Apparently, in June of 1969, Mr. Geneen sought to meet with President Nixon about certain financial and economic concerns of ITT, including, but not limited to, the antitrust suits. John N. Mitchell, for one, thought the meeting would be inappropriate because of ITT's legal involvement with the Department of Justice. The meeting was not schedule.

3A. LOREN BERRY LETTER, JUNE 9, 1969

L. M. BERRY AND COMPANY
P. O. Box 8000 • Dayton, Ohio 45401
Area Code 513 298-4311

LOREN M. BERRY
Chairman of the Board

June 9, 1969

Dwight Chapin

President Richard M. Nixon
The White House
Washington, D. C.

Dear President Nixon:

I am sending you herewith copy of a letter containing late information regarding matters of vital importance to our country both at home and abroad.

The letter, dated June 3rd, was written by Mr. Harold S. Geneen, President of International Telephone & Telegraph Corporation, to Secretary Maurice H. Stans, and sets forth vital information which I believe you would like to have. I note that Mr. Geneen has asked to see you in the hope that he can give you any further facts needed. I sincerely hope you can arrange such a meeting at an early date because I definitely feel that it would be a two-way street; namely, that you can be of real help to each other, both from a national and an international standpoint.

I want to thank you for a wonderful evening at your dinner party May 27th. It was a real pleasure for me to be there, also to see you looking fine.

Best regards and all good wishes.

As always,

Loren M. Berry

LMB/lm

Encl.

3A. HAROLD GENEEN LETTER, JUNE 3, 1969

INTERNATIONAL TELEPHONE AND TELEGRAPH CORPORATION
320 PARK AVENUE
NEW YORK, N. Y. 10022

HAROLD S. GENEEN
CHAIRMAN AND PRESIDENT

June 3, 1969

The Honorable
Maurice H. Stans
Secretary of Commerce
14th and Constitution Avenues, N. W.
Washington, D. C. 20230

Dear Maury:

From the newspaper reports I can see the immense amount of globe-circling coverage you have been putting into some of the long-standing problems of the Department in an effort to get them cleared up promptly. I think your example bears out what all of us knew you would accomplish in a difficult public assignment.

Because of your own load I hesitate to raise any further problems with you, yet timing is of such importance that I would appreciate very much your reading the contents of this letter, and then perhaps I can talk to you briefly on the phone without disturbing your work schedule too much.

First, to put this in context, I write concerning a problem that involves national policy and also deeply involves our company and which, very importantly, comes under the jurisdiction of your Department.

The United States balance of payments situation is, in my opinion, probably the most difficult, long-standing problem that the nation faces and it will continue to be potentially the most dangerous and troublesome one that will be with us into the future as far as we can see.

Essentially, the payments problem is a balance of trade problem that primarily confronts the Department of Commerce for solution. Against this background, let me use our company as an example of the difficulties that any of us in this activity faces.

First, ITT has consistently brought back cash to the United States -- "net of everything" -- for the past 20 years.

The rate at which we are bringing this back has been <u>doubling every five years</u>.

2--

This year, 1969, ITT will bring back approximately $200 million (net of everything).

At the pace we are moving, in the next four years we should bring home approximately $1 billion (again net of everything). Yet there is a problem for any U. S. company in "bringing back the bacon" in this manner.

Let me recall my early days with the company ten years ago to explain. I had been in the company little more than 12 months when Cuba seized our telephone company in Havana which, at that time, represented about one-quarter of our total earnings. Despite the fact that Bob Murphy, then Undersecretary of State for Political Affairs, assured me that the U.S. Government would have the company back for our shareholders in 90 days, ten years have passed and Castro still runs Cuba and we still do not, of course, have our telephone company back. Nor has the telephone company been returned that was expropriated in Brazil (though on that one we received some compensation), and every morning I look for a headline about what will happen to our Peru Telephone Company, a pawn in the current problem in that country.

When we lost the Cuban Telephone Company, we lost a great deal of investor confidence at that time. The loss coupled with the fact that 80% of our earnings then came from overseas, although some 93% of our stockholders were (and are) U.S. citizens, gave us a tremendous problem. We decided then and there that it was necessary for us to establish a broad, firm U.S. base in order to continue to carry on foreign trade. This we have done, complying with all of the laws of the U.S., including those of Antitrust.

In short, Maury, in order for a U.S. company such as ours to be a "bacon winner" for you abroad and to be able to continue to contribute to the balance of payments account, we have found it is absolutely essential to our stockholders' confidence and support, to establish credit and raise money abroad-- to do all of the necessary things with which you are so familiar -- to have a large, strong domestic base. We put the requirement as approximately two-thirds domestic to one-third overseas earnings.

I think our record on balance of payments testifies to how well this system works, including the fact that any acquisitions we have made, we have taken overseas promptly to enhance both our positions abroad and to maintain our "bread winning" role.

3--

Now, as against this problem, we are running into a problem with the Antitrust Division of the Justice Department which is suing us on mergers we announced last year, and we are advised by counsel that this is being done on highly speculative and improper grounds. As a matter of fact, Mr. McLaren now candidly admits to us that he is really bringing suit because we are a "conglomerate" and because we are now a "big company" and that he will continue to do so using any pretext he can dream up. This policy of Mr. McLaren's is all the more difficult to understand because we have and are proceeding in compliance with the antitrust laws of the land as they have been interpreted by the legal profession and the courts for a great number of years, and in compliance with the guidelines laid down by the Justice Department. We are still assured, as I write, by our antitrust attorneys that the grounds on which these cases are being taken probably will not stand up in court.

This is reassuring to a degree, but the suit filed and the prospect of other suits are a severe deterrent to carrying out our plans, running the business daily and, most importantly, a major impediment to continuing our role as one of the leading foreign commerce companies of the United States.

Only last week we had a serious example of this negative impact abroad. We had a bond issue in the United Kingdom that was simply a flop. This was our first flop in 25 years of raising funds abroad and while there are many factors that have to be considered, certainly one that cannot be overlooked -- reflective of the antitrust policy -- was a press report, prominently placed in The Times of London, on the issue saying that "the U.S. Government was against ITT because it is a conglomerate". The European pickup of The Times story and the failure of the issue will not, to put it mildly, be helpful to us or to you.

The significance of the unwarranted and unjustified antitrust policy now appears in light of the responsibilities of your own Department in connection with the balance of payments effects in our activities abroad, as well as domestically.

Now, let's look at some additional facts.

1. There are in existence two outstanding reports on the economic effects of antitrust policy, and the role of the conglomerates is dealt with specifically. These reports were compiled by outstanding panels of economists, one at the request of former President Johnson, the other at the request of President Nixon. The first report is known as the Neal Report and was released last week by Mr. McLaren after repeated requests for its disclosure.

The report states very simply, in effect, that the suits contemplated against us are now supported by law and it recommends further a policy of antitrust enforcement that would not have provided a basis at all for the suit that was filed against our merger with Canteen.

The second report, known as the Stigler Report and compiled by an eminent panel of businessmen and economists, not only reiterates the main points of the Neal Report, but even more emphatically opposes the use of the Antitrust Division to curb mergers on the basis of "way-out" theories of "reciprocity", "potential competition", etc., except where clear evidence of illegality exists. The Stigler Report has not been released though it has been reported as a "secret Nixon Report" in the Washington Star, and reliable sources are quoting its contents in Washington.

2. In a discussion with Arthur Burns, I found that his general thoughts support the position that there is no sound basis for the unwarranted attack on conglomerates that is being waged.

3. In an informal discussion with David Kennedy, I found that his concerns are against "improper concentration within an industry" and not with conglomerates per se or because of size, a position also taken by the Neal and Stigler Reports.

In talking with several of the key Republican policy people in the Congress, including Senator Dirksen and Congressman Ford, I find they hold equally strong views against unjust attacks on conglomerates because of size per se or "fancy" theories of reciprocity which are untried in law and generally regarded as unsound.

Among the Government Departments which would be directly involved, it appears your Department would have a sharp and immediate interest. Of course, I don't know your detailed views on this subject, but I do have the impression that you were concerned about the aspect of "raiders" in the business world. As you know, this has also been the concern of Congressman Mills. As I am sure you are aware, we have never indulged in these "raiding tactics". On the contrary, all of our mergers have been jointly agreed to, they have been harmonious and the considerations have been represented by normal stock securities.

5--

It does appear, Maury, that the need for your support of large American foreign trade companies is very real. The need is to be allowed a domestic base from which to move with assurance in world-wide trade.

This, I think, is demonstrated by the fact that such acquisitions as we make are done freely, that they are paid for fairly, with proper securities. Most importantly, these kinds of acquisitions result not only in more efficiency domestically, but -- by carrying these activities abroad-- they increase the ability to expand balance of payments remittances.

It does seem that almost every one in Government who should be concerned with these matters is in agreement on one thing -- that a proper policy would recognize the care with which we have planned our activities in close compliance with the law, as well as the very real contributions we are making domestically in addition to remittances from abroad. I have said "almost every one". There are those, however, who seem to feel that the only proper course is one of harrassment and of punitive legal actions.

Since it appears we are to be the first at bat, there remains only this question -- "While there is still time, how can we do anything about this?"

I have asked to see the President in the hope that I can draw the facts to his attention.

I can see no virtue in any discussion with Mr. McLaren or in turn with the Attorney General who either from conviction or commitment continues to express support of Mr. McLaren's actions.

The purpose of this letter is to see if I can elicit your support based on the facts that I have outlined here to do two things:

1. See that the Stigler or Nixon Report is released officially. I believe it might have a healthy influence on this problem since it represents the Administration's best advice on policy solicited at the President's request.

6--

2. Possibly, since I feel this directly and indirectly affects your own responsibilities, that you request that there be an Administration review and reappraisal of these policies with all of these facts now brought to light. Sufficient differing policy, versus the current activities of the Justice Department in attacking conglomerate mergers on speculative grounds, has been expressed at high enough levels, as detailed above, to indicate that such a review would be in order.

I do want to point out that while this is essentially a broad policy issue, our company is directly and justifiably interested in the outcome.

I would like to talk with you briefly on the phone, after you have read this, if I may have the opportunity.

Thank you for your courtesy and consideration.

Sincerely,

Hal

3B. JOHN MITCHELL MEMORANDUM, JULY 14, 1969

THE ATTORNEY GENERAL
WASHINGTON

July 14, 1969

TO: John Ehrlichman

FROM: John Mitchell

RE: Attached

As you may know, Mr. Geneen's company is involved in a number of antitrust suits with the Justice Department. Further, some of the companies in his conglomerate are represented by the Mudge firm. I would see no reason for the President to see Mr. Geneen unless he wants further review of the antitrust problems from him. Needless to say, the Geneen letter attached does not reflect accurately the legal position of the Justice Department in the antitrust suits.

It might be well to leave this matter with Maury Stans for a follow-up on the balance of payments matter.

July 16, 1969
Wednesday - 3:15 p.m.

MEMORANDUM FOR MR. PETER FLANIGAN

SUBJECT: Proposed Appointment with the President for Harold Geneen of IT&T

In accordance with the recommendations that you set forth in your memorandum (attached), we have not scheduled an appointment for Harold Geneen of IT&T.

Since you are familiar with all the matters relating to the subject matter, I would like to suggest that you talk to Bryce Harlow and see if it is agreeable with him for you to call Wilson and explain why it would be inappropriate for the President to see Geneen.

DWIGHT L. CHAPIN

DLC:ny

4. In March, 1971, the Solicitor General authorized an appeal to the Supreme Court from an adverse decision in the United States v. ITT (Grinnell) case because of practical difficulties in the future if the decision were left standing. The Solicitor General and his associates thought the case to be very hard; his chief deputy thought the government's chances of winning were minimal.

Form DJ-150
(Jul. 4-[illegible])

UNITED STATES GOVERNMENT DEPARTMENT OF JUSTICE

Memorandum

TO : The Solicitor General DATE: March 2, 1971

FROM : A. Raymond Randolph, Jr.

SUBJECT: United States v. International Telephone & Telegraph (D. Conn.)

I recommend appeal to the Supreme Court, although not on the primary basis set forth in the accompanying memorandum from the Antitrust Division.

Appeal is sought mainly on the ground that the district court erred in refusing to consider evidence */ of a trend toward concentration in the economy as a whole. Basically the theory is this: Section 7 of the Clayton Act forbids one corporation from acquiring another "where in any line of commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition . . ." The Court has held that "any section of the country" can mean the entire country, United States v. Pabst Brewing Co., 384 U.S. 546, and it should similarly hold that any line of commerce can mean the entire economy. The Court has also recognized that a trend toward concentration in a specific product market is relevant in determining whether a merger may have a substantial anticompetitive effect in that market. United States v. Von's Grocery Co.,

*/ Dr. Mueller's proposed testimony.

60-149-337-1

384 U.S. 270, 277-278; id. 281 (White, J., concurring). Thus, a trend toward aggregate concentration in the entire economy should be considered as relevant in determining whether a merger violates Section 7.

The obvious question is relevant to what? To the effect of this merger on competition in the particular product markets or to the effect on competition in the entire economy? While it is far from clear in the memorandum, apparently Antitrust would answer "both." Thus, one theory is that with respect to the particular product markets involved in this merger, something less than the usual quantum of proof is needed to show that there may be substantial anticompetitive effects if, in addition to such proof, the government can show a trend in the economy toward increasing aggregate concentration (see p. 25, 2d ¶). The other theory is that this merger will increase aggregate concentration; that a considerable increase in aggregate concentration should be equated with a substantial lessening of competition under Section 7; that the general trend toward concentration supports this equation and must be considered in assessing the effects of an increase in concentration by a particular merger; and that the anticompetitive effects in Grinnell's product markets are a micro-illustration of the general results of greater concentration through conglomerate mergers. (See p. 5, 1st ¶.)

At the outset I should note that there is no serious problem about whether we properly raised these issues below. The Memorandum in support of Dr. Mueller's proposed testimony does seem to focus only on the first theory:

> Consequently, such evidence [the trend] is relevant to the issues in this case in two respects. First, the specific anti-competitive consequences of this merger must be considered within the perspective of this merger trend. The result of placing this merger against that background is to require

> that greater judicial concern be given to demonstrated anticompetitive effects within specified lines of commerce, because of the additional impact upon competition in general. [p. 9]

But other statements do hint at the second theory also:

> In addition, apart from its instant anticompetitive consequences, this merger must be viewed as one which would further and encourage the previously discussed trend toward increasing concentration. [Id.]

I

As to the first theory, I fail to see why it is at all necessary to argue that Section 7 should be construed so that "any line of commerce" means all lines of commerce. If the general trend toward concentration bears on how the merger will affect competition in, for example, the fire sprinkler system market, then the court should consider it -- and vice versa. But the interpretation of Section 7 has nothing to do with this.

However, rather than offering reasons why this trend is relevant the attached memorandum seems to proceed on the basis that it is sufficient to argue that Section 7 can mean "all lines of commerce": Congress itself deemed the evidence of a trend toward concentration relevant and that is enough. One obvious difficulty with this approach is that the legislative history in support of construing Section 7 to mean "all lines of commerce" is weak. Obviously in order to persuade the Court to accept this construction something more will have to be shown. And that something must consist of a demonstration of the pertinence of this trend with

respect to competition in the particular lines of commerce involved in the merger. Unfortunately such a demonstration has not been made and, frankly, I doubt whether one could be.

Moreover, even if Section 7 is interpreted as Antitrust urges, there is still the problem whether proof about aggregate concentration in the entire economy -- that is the trend toward such concentration -- assists proof with respect to particular product markets. If more than the trend itself is needed to show a lessening of competition in all lines of commerce, and if the other evidence is less than adequate to show this in a particular line of commerce, there is no apparent reason why some combination of the two shows a substantial diminuition of competition within a particular product market, other than the bald and conclusory assertion that increases in aggregate concentration through conglomerate mergers must be stopped somehow. This seems to be little different from a case where we have introduced insufficient evidence of anticompetitive effects within the entire country and also within a specific geographical market. No one would contend that this nevertheless makes out a violation of Section 7 with respect to the specific market area. Yet the arguments in support of the proposed theory do essentially just that, although for lines of commerce rather than for sections of the country. Unless it can be shown how the trend increases the probable anticompetitive effects of the merger within the product markets, unless this nexus can be supplied, the proposed theory is baseless.

It must be remembered that the trend we seek to prove is a trend toward <u>aggregate</u> concentration, not <u>market</u> concentration. (Apparently most economists agree that there is no trend toward the latter.) As indicated above, there are, in my view, no grounds for arguing that this has an anticompetitive effect on a particular product market. To be sure, ITT is one of the largest conglomerates; it has been gobbling

up companies in diverse industries in the past; and this past practice, together with the general trend in the economy toward increasing concentration, indicates that ITT will continue to follow the same course in the future. As ITT acquires more and more companies, the opportunities for reciprocal dealing brought about by the acquisition of Grinnell, while perhaps somewhat less than substantial at present, may intensify. If this were the theory, it would at least be understandable. But (a) the trend adds little, if anything, to the force of this argument, and (b) this is not the theory. The difficulty in considering the trend toward aggregate concentration with respect to effects within specific product markets is not so much in requiring courts to try to add apples with oranges. The fundamental problem is that we have given them no reason to even try to perform that task.

Perhaps this is why no satisfactory basis has been offered for explaining just how the trend toward concentration should be combined with other factors to allow a court to form an overall judgment about the case. (Of course, it is asserted, as indeed it must be, that the district court's failure to consider Dr. Mueller's testimony made a difference in the outcome [p. 25].) Obviously if one cannot show why certain evidence is relevant at all, it is impossible to say how much weight a court should give to such evidence in deciding the case before it.

II

The other theory of the case is that this merger has lessened competition in the entire economy -- all lines of commerce -- and that the trend toward aggregate concentration relates to this. One might ask how this could possibly help when there appears to be trouble enough in making out a case with respect to only a few lines of commerce. Actually it would be easier to show a violation of Section 7 under this theory for little more than the trend

plus the size of the merging firms would have to be proved.

As noted earlier, the Court has held that a tendency toward increasing concentration in a product market is highly relevant. The reason is that, in the Court's view, an industry that tends toward oligopoly becomes less competitive. While a particular merger, as seen in isolation, may seem to push the industry toward oligopoly, it may be that other new firms have been entering so that the overall movement is in the opposite direction. Also, the concept of oligopoly itself necessitates looking at more than one firm; the actions of other firms in regard to their share of the market must therefore be considered. Thus, the trend toward concentration in the market is highly relevant.

The basic probelm with using this approach with the entire economy is twofold. First, as noted above, the increase has been in aggregate concentration, not market concentration. (This is perhaps understandable in light of the fact that conglomerate mergers do not increase market concentration.) While there is substantial economic opinion that increases in market concentration do not decrease competition, there is an even more weighty line of authorities who contend that increases in aggregate concentration do not have any appreciable effect on competition. (Dr. Mueller, of course, does not agree.) Second, and more important, the trend in a product market has been treated by the Court as just one factor to be considered. But here, aside from the size of the merging firms, we have little else to offer.

Thus, if we ask the Court to assess the competitive effects of this merger on all lines of commerce, the question arises whether we can supply any meaningful guideposts. The Court has stated that "the purpose of delineating a line of commerce is to provide an adequate basis for measuring the effects of a given acquisition." United States v.

Continental Can Co., 378 U.S. 441, 457. Surely the trend plus the size of the acquired firm cannot be enough. Suppose Grinnell, although relatively quite large, was not a leader or even close to a leader in its product markets and suppose also that the top four firms in that market held a significant combined share. It would seem that ITT's acquisition could in fact increase competition; at the least, competition would certainly not be decreased. Yet the merger certainly added to the trend toward aggregate concentration and under the proposed theory it would presumably be a violation of Section 7. However, one views the desirability of such acquisitions as a policy matter, the fact is that there was certainly no intention to forbid them under Section 7; indeed encouraging this kind of activity may have been part of the purpose of the statute. In short, if trend and size are the only relevant factors, this would mean simply that conglomerates cannot acquire relatively large firms. I don't think there's a ghost of a chance that the Supreme Court would buy such a nonselective and indiscriminate approach.

This brings me to the question how the evidence with respect to competition in Grinnell's product markets comes into play. One thing seems certain. The fact that we have failed to show a substantial lessening of competition within those markets -- assuming that the district court was correct -- cannot be fatal under the proposed theory. For if such a showing were required, then the theory itself would be mere surplusage. On the other hand, if, the proven effects of the merger in particular markets are intended to illustrate the general result of increased aggregate concentration, it seems quite damaging that these effects are somewhat less than substantial in the very product markets directly involved in the merger (again assuming the district court was correct in this regard.) There appears to be no satisfactory way out of this dilemma. Indeed, given this problem it is difficult to see why we

should even address ourselves to the anticompetitive consequences within Grinnell's product lines.

Unfortunately I must conclude that neither theory comes even close to holding water. Quite frankly, we should not attempt to take a case to the Supreme Court on such a flimsy basis.

However, it would be unwarranted to conclude from this that we have no weapons under Section 7 against conglomerate mergers. We of course still have the more traditional arguments with respect to entrenchment of a dominant firm, although these proved less than persuasive to the district court on the facts of this case. Another line of attack which at least seems more persuasive than the approach proposed here would be to argue that the acquisition of one of the top four leading firms in concentrated markets should be illegal because (a) the possibility that that firm will become further entrenched, thus making the market more rigid, and (b) even if this in itself might not be enough to show a substantial lessening of competition it should be considered as such because the acquisition of a more minor firm would have helped it to increase its share of the market, thus decreasing market concentration. Obviously the major argument against this is that we are not showing a lessening of competition, but rather the failure of the merger to be pro-competitive. Nevertheless I still believe that this line of argument is much more tenable than the theories expressed in the attached memorandum. */

Although I would thus not appeal on the basis of the theories discussed above, there are, however, two grounds on which I would recommend seeking Supreme

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*/ Since we did not argue this below, I should think that we cannot now offer it to the Court.

Court review. The first is with respect to the district court's finding that Grinnell is not a "dominant" firm in its product markets. This term has never been defined by the Court and here the district court supplied no definition. The meaning of the term is important because it has been thought that if a dominant firm becomes more entrenched by the merger this will substantially lessen competition. (See pp. 29-30 of the Antitrust memorandum.) The memorandum spells out in detail the arguments against the court's finding (pp. 29-33) and these seem quite persuasive.

I recognize of course that the district court went on to hold that even if Grinnell is a dominant firm the government's proof is nevertheless inadequate. On this score I think we can mount a strong attack against the court's findings with respect to the possibility of reciprocity. Again this seems to give rise to significant questions on which the Supreme Court has not yet spoken: e.g., whether it is enough to show that the structure resulting from the merger makes reciprocal dealing likely regardless of the acquiring firm's disavowals of following this practice; and whether the possibility of reciprocal dealing must entrench a dominant firm in order to be deemed substantially anticompetitive or whether that possibility standing alone is enough. See pp. 41-42 of Antitrust's memorandum.

In my view a win on either or both of these grounds will go a long way toward halting the trend toward conglomerate mergers and will certainly be a significant step in the direction that Mr. McLaren has indicated the Department of Justice should move.

4B. DANIEL FRIEDMAN MEMORANDUM, MARCH 15, 1971

Office of the Solicitor General
Washington, D.C. 20530

March 15, 1971

DMF:mch
60-149-037-1

MEMORANDUM FOR THE SOLICITOR GENERAL

Re: United States v. International Telephone and Telegraph Corporation (D. Conn.)

I recommend APPEAL.

This is the first of the government's conglomerate merger cases that has been decided. Since the beginning of his administration as head of the Antitrust Division, Assistant Attorney General McLaren consistently and repeatedly has taken the position that Section 7 of the Clayton Act reaches such mergers; in a 1969 speech the Attorney General suggested a similar belief. Three other conglomerate cases are pending before the district courts. Considering all the circumstances, we really have no choice but to seek Supreme Court review of this decision which, if left standing, would be a serious adverse precedent that probably would doom our remaining cases and would also make it extremely difficult to proceed against future conglomerate mergers.

The basic problem is developing effective theories upon which to challenge Judge Timbers' decision. The latter, unfortunately, is an able job, and at every turn we will be up against carefully drawn findings in which the judge's credibility determinations played an important part. It is vital that our appeal not involve a wholesale frontal attack on those findings; we must avoid presenting the case so that the appellee effectively could argue that "What the Government asks, in effect, is that we try the case de novo on the record, reject nearly all of the findings of the trial court, and substitute contrary findings of our own" (United States v. Yellow Cab Co., 338 U.S. 338, 340). We may have to challenge some of the findings--the fewer the better, of course--but basically our case for reversal must be that the district court applied the wrong legal standards in holding that this merger did not violate Section 7. Several theories are possible.

1. The most persuasive argument to me is that the nature of the large modern conglomerate enterprise necessarily carries with it a sufficiently serious likelihood of reciprocity that the effect of its acquisition of a major firm may be substantially to lessen competition in that firm's industry within the meaning of Section 7. Federal Trade Commission v. Consolidated Foods Corp., 380 U.S. 592, seemingly announced the rule that the acquisition "of a company that commands a substantial share of the market" (as Grinnell does here) violates Section 7 if it creates the "probability of reciprocal buying" (p. 600). The Court recognized that the "'mere possibility' of the

prohibited restraint is not enough" (p. 598) and it relied heavily on the Commission's finding, solidly supported by clear proof, that the merger there created a real likelihood of reciprocal buying.

In the present case, on the other hand, the district court found expressly to the contrary. It ruled (mimeographed opinion 47-48) that "the substantial, credible evidence demonstrates that reciprocity and reciprocity effect is not likely to occur, even if the merger were to create the opportunity for reciprocal dealing, particularly in view of ITT's anti-reciprocity policy, implemented by the withholding of purchasing and sales data and the profit center organization of ITT" and that "the government has not sustained its burden of establishing either that the merger will create an opportunity for reciprocal dealing through a market structure conducive to such dealing, or that reciprocal dealing in fact is likely to occur even if the merger were to create an opportunity for it." It reached these conclusions on the basis of a comprehensive and careful analysis of the evidence, and its findings will be extremely difficult to overturn. Our best chance will be to argue that the findings rest upon an erroneous concept of what kind of showing the government must make to prove the "probability of reciprocal buying," and that the court has imposed too strict a standard upon us. The problem, of course, is that the proof we urge as sufficient may strike the Supreme Court as showing only a mere possibility, and not a probability, that the merger will substantially lessen competition. Although there is some support for our position in the recent White Consolidated decision (N.D. Ohio, February 24, 1971)--with its acceptance of the theory that a merger leading to "reciprocity effect" may involve a significant change in market structure--that decision was on an application for a preliminary injunction, and the court did not have before it the detailed record of the present case.

2. Antitrust also proposes that we stress the advantages that would accrue to Grinnell as a result of IT&T's ownership of Hartford Fire Insurance. The use of automatic sprinkler systems reduces fire insurance premiums; insurance brokers will point this fact out to their customers; and Hartford's brokers, who presumably are aware that Hartford is a member of the same corporate family as Grinnell, are hardly likely to be insensitive to the desirability of encouraging purchases from the latter. Moreover, insurance brokers apparently are an excellent source of business leads for sprinkler installation firms, and IT&T's ownership of both Hartford and Grinnell will give the latter an entrée not available to others in the business.

The district court rejected this theory because of findings which, in its view, eliminated the factual basis therefor. Here, too, we will have a hard time overturning the findings. More importantly, this theory is less attractive than the reciprocity approach for two reasons: (1) If we won on this ground, it would have no impact beyond this case and would not furnish an effective tool for challenging other conglomerate mergers. (2) It seems somewhat anomalous to be attacking the Grinnell acquisition because

of the allegedly harmful effects that flow from IT&T's ownership of Hartford, when in another case we are simultaneously challenging IT&T's acquisition of that company.

3. Antitrust stresses the cumulative effects of reciprocity, the fire insurance company interlock and various other alleged competitive advantages of the merger for Grinnell, from which it concludes that the merger is likely to entrench Grinnell's dominant position in the automatic sprinkler business. It contends that such entrenchment condemns the merger under the rationale of Federal Trade Commission v. Procter & Gamble Co., 386 U.S. 568. The findings of the district court, however, seriously undercut this theory. In Procter & Gamble we had the advantage of Commission findings that established the factual foundation for the entrenchment theory, and it was not difficult for the Supreme Court to accept those findings and then to conclude that they supported the agency's conclusion of probable anticompetitive effect. In the present case, on the other hand, the district court's findings lead to the opposite conclusion. Particularly in dealing with the entrenchment theory, I think that our argument seems particularly vulnerable to the charge that we have shown only the possibility, but not the probability that the merger will cause competitive injury.

The district court's reliance upon its conclusion that Grinnell is not the dominant company in its industry may be vulnerable. In the first place, Grinnell is the largest firm, with 20-24 percent of the market, and if it is not the dominant firm (although I think it is), it certainly is a dominant one, and that should be enough. In any event, as long as the acquired firm is important and significant in the market, the entrenchment of its position due to a merger should suffice to condemn the merger under Section 7, whether or not it is considered dominant. But even if the district court is wrong in its dominance ruling, we still have to overcome the court's further finding that in any event the merger would not entrench Grinnell in the sprinkler market, and that is where our real problem on this branch of the case will be.

4. Finally, there is the theory that this merger is invalid because it furthers a trend toward economic concentration in the economy as a whole.

(a). The first facet of this theory is that amended Section 7 was intended to prohibit any merger that produces a significant increase in such concentration. This argument--which I understand Antitrust does not now propose to make--relies on the legislative history of the 1950 amendments to Section 7, in which Congress frequently indicated its concern over the increase of concentration in American industry. The difficulty is that the method Congress chose to deal with the problem was to strengthen the prohibitions of Section 7, but not to change its basic focus. Congress apparently did not abandon the traditional approach to mergers which emphasized the impact of the acquisition upon competition in the particular geographic and product markets involved; it merely provided a more flexible definition of those markets, in order to strike at the general trend toward

concentration by prohibiting all mergers that have the proscribed anti-competitive effect "in any line of commerce in any section of the country."

Antitrust suggests (Memo. p. 10) that since in United States v. Pabst Brewing Co., 384 U.S. 546, the Court held that the government may establish a violation of Section 7 by "introduc[ing] evidence which shows that as a result of a merger competition may be substantially lessened throughout the country" (p. 549), it can similarly establish a violation by showing a generalized lessening of competition in the economy as a whole without focusing on any particular product. In Pabst, however, the district court had recognized that the continental United States was a relevant market; and we introduced evidence showing a significant trend toward increases in the level of concentration in the beer business on a national basis, which the Pabst-Blatz merger significantly furthered. It is quite another matter, however, to conclude that because there has been a general increase in concentration in the economy as a whole, a merger of two large firms which increases that concentration--although necessarily only slightly--produces the anticompetitive effects that Section 7 condemns. This theory leads to the conclusion that any merger--whether conglomerate or not--violates Section 7 if the companies are large enough that their combination fairly can be said to be a significant step toward furthering concentration in the whole economy. Perhaps Congress may enact legislation taking that approach to mergers, but it is difficult to conclude that it did so in Section 7 of the Clayton Act. This theory also would require the Court to ignore its frequent statements that, in order to determine the anticompetitive effect of a merger, the relevant geographic and product markets must first be ascertained.

(b). A second aspect of the aggregate concentration theory is the one Antitrust seemingly now urges: that because there has been an increase in concentration which in recent years has been mainly the result of conglomerate mergers, a lesser degree of proof of traditional antitrust criteria should suffice to establish illegality in conglomerate merger cases. Under this analysis, Antitrust argues that the evidence it cites to show the entrenchment of Grinnell, although perhaps not sufficient to establish illegaliity if a nonconglomerate had been the acquirer, is enough where the acquirer is a large conglomerate. I do not understand the basis of this analysis. The anticompetitive consequences that stem from IT&T's status as a conglomerate exist because of the widespread nature of IT&T's operations and the relationship between those operations and Grinnell's business. This relationship would be the same if IT&T were the only conglomerate. The fact that there are many other conglomerates that also have made acquisitions that allegedly have weakened the play of free competition in many industries is not relevant to determining what the competitive effect of this merger is likely to be. It is difficult to understand why lesser proof should suffice in a particular case merely because elsewhere in the economy similar mergers have taken place.

To recapitulate: This is an extremely difficult case, and our chances of winning in the Supreme Court seem minimal. Nevertheless, I think we have

no practical choice but to appeal. Our best approach is the reciprocity theory, and even that may founder on the particular facts. It holds the best promise, however, and if accepted would provide a powerful tool for dealing with other conglomerate acquisitions. It is impossible to evaluate the strength of our various theories without a detailed study of the lengthy record; perhaps when we write the brief on the merits, some of our other approaches may turn out to be stronger than they seem at present. At this stage, however, all we can really do is outline our theories, and avoid arguments that will not withstand probing analysis. We should take a bold and broad approach that minimizes challenges to the findings of and disagreements with the district court on minor aspects of its decision, and moulds the issues in terms that will avoid the appearance of seeking a trial de novo.

Daniel M. Friedman

UNITED STATES GOVERNMENT DEPARTMENT OF JUSTICE

Memorandum

TO : DMF DATE: 3/25/71

FROM : ARR

SUBJECT: SUPPLEMENTAL MEMORANDUM FROM ANTITRUST

Now that Antitrust has reiterated its strong recommendation that we appeal, we doubtless have to appeal. On that much everyone agrees. Everyone also agrees that on appeal we should attack the court's holdings with respect to dominance and reciprocity, although I do not think that either one of us shares Antitrust's confidence that the court's findings of fact will not be a substantial problem because we need only challenge the inferences drawn from those findings. And finally everyone agrees that our chances of prevailing on these arguments is mighty slim.

But unanimity ends when we get to the business about the trend toward concentration, which is discussed on page 3. Antitrust answers none of our questions and meets none of our criticism about the relevance of that trend. We are first told that the ITT-Grinnell merger will scare smaller sprinkler firms into merging with other large companies. But even assuming this shows that an anticompetitive effect will result (whatever happened to the desire to encourage foothold acquisitions?), (a) if the district court was right that the ITT-Grinnell merger will not have any significant anti-competitive effects it is hard to see how we can show that the other firms will be scared into merging, and (b) what has this got to do with the trend toward concentration in the economy as a whole?

The rest of the second paragraph of page 3 is, to put it bluntly, mumbo-jumbo. Now it seems the idea is that the trend is relevant only to acquisitions by large congomerates of leading firms. Ergo, there should be no concern that foothold mergers will be prevented. I am at a complete loss to understand why, if the trend is relevant at all, it is relevant only to the former situation. In any event, the whole point of my memorandum and yours was that Antitrust had failed to show how the trend toward concentration is relevant at all. We still do not know.

Where do we go from here? I would strongly urge that the Dean, when he authorizes appeal, limit this to the dominance and reciprocity holdings of the district court. If our case is weak on those issues, we will not even be able to put up a respectable front before the Court if we taint and obfuscate the rest of the case by attempting to work in some full-blown "theory" about the trend toward concentration.

Incidentally it seems quite strange for Antitrust to suggest (on page 4) that the ITT-~~GXXHMXX~~ Canteen case could be considered by the Court with this one. It is my understanding that Dr. Mueller's testimony was excluded in that case on the ground of incompetence because of the FTC's refusal to release underlying data. The instant case has enough problems of its own without introducing that can of worms into it.

A. R. RANDOLPH Jr.

OFFICE OF
THE SOLICITOR GENERAL

3/26/71

SG:

Like Pay Randolph, I don't find Antitrust's memo particularly illuminating. I agree that you should authorize appeal. But the precise scope and form of our arguments must await the jurisdictional statement; we should not attempt to foreclose making any arguments that either hold out some prospect of success or, even if they really do not, present a theory upon which the Supreme Court should rule--if only to open the way for legislation.

DMF

Retyped from indistinct original

File HES
60-149-037-1

Office of
The Solicitor General

March 26, 1971

Re: United States v. International
Telephone and Telegraph Corporation

filing date: April 20, 1971 (3/20/71 order
Justice Harlan)

DIRECT APPEAL AUTHORIZED.

ERWIN N. GRISWOLD
Solicitor General

I think this is a very hard case, but it is an important one and Antitrust wants to go ahead, and it is in the public interest, I think, that we should learn more about what the law is in this area. ENG.

Retyped from indistinct original

4 Sc. 1155.
Cp-149-037-1

OFFICE OF
THE SOLICITOR GENERAL

March 26, 1971

Re: United States v. International
Telephone and Telegraph Corporation

filing date: April 20, 1971 (3/20/71 Cable Quaker Hollow)

DIRECT APPEAL AUTHORIZED.

Erwin N. Griswold

ERWIN N. GRISWOLD
Solicitor General

I think this is a very hard case, but it is an important one, and Antitrust wants to go ahead and I think the public interest lies that way. We should know what the law is in this area. EG

5. After the President's telephone call of April 19, 1971, to Kleindienst ordering him to drop the Grinnell appeal, Kleindienst met, in his office, with McLaren and the Solicitor General and requested the Solicitor General to apply for an extension. McLaren had no objection to the application for an additional extension of time.

Senator KENNEDY. Now, at some time you had a call from either Mr. McLaren or Mr. Walsh about the 18th, that is right, April 18?

Mr. GRISWOLD. No, I never had a call from either. I understand now that the 18th was a Sunday, so this must have been on the 19th.

Senator KENNEDY. And your secretary told you that the Deputy Attorney General wanted you down in his office?

Mr. GRISWOLD. That is right.

Senator KENNEDY. Could you tell us about that meeting?

Mr. GRISWOLD. I think I have summarized it quite completely in the statement I have already filed.

Senator KENNEDY. There was no one else there?

Mr. GRISWOLD. No one else was there. It didn't last more than 5 minutes, perhaps less.

Senator KENNEDY. And as I understand from your memorandum—could you repeat for us what you believe to be the reasons for seeking the delay in the filing of the jurisdictional statement?

Mr. GRISWOLD. The basic reason was that the Deputy Attorney General wanted it. And I understood the underlying reason was, the letter which he had received from Mr. Walsh which requested it, which was summarized, but which letter I didn't see—I didn't ask to see, it wasn't withheld from me—it was simply, as I recall it, it was on the desk or the side, in front or beside the Deputy Attorney General as he was talking to me, and he pointed to it—but the substance was that there were some matters here which ought to receive further consideration.

Senator KENNEDY. There is nothing further that you can add about that conversation?

Mr. GRISWOLD. No.

Senator KENNEDY. He just said that there are other matters that have been included in this letter that deserve further consideration?

Mr. GRISWOLD. No; as I understand it, it was matters relating to whether we should proceed by litigation on conglomerate mergers.

Senator KENNEDY. The materials we received from the Department show the Solicitor General's memorandum up to March 26, 1971. Can you give us any idea what, if anything, happened between March 26 and April 19?

Mr. GRISWOLD. The jurisdictional—let me start over again, Senator. We had probably 30 or 40 other cases in my office moving through during that time. Once the appeal was authorized, word would be sent to the Antitrust Division, and they would be requested to make a draft of the jurisdictional statement. The jurisdictional statement would be prepared, it would come to my office, and it would be worked over in detail by one of my younger staff members, and then reviewed thoroughly and carefully by my senior staff member, and then would come to me, and then would go to the printer.

And as I recall it, it went to the printer on Thursday or Friday before April 19, and was due back on the afternoon of April 19 in printed form.

Senator KENNEDY. You have supplied materials, or the Department has, a series of memoranda, the following documents—you are familiar with those items here? Are you familiar with the letter from Mr. Wilson that was sent to the committee?

Mr. GRISWOLD. I don't know what you are referring to, Senator.

Senator KENNEDY. Mr. Solicitor, has there been any other occasion in the times that you have served under this or previous administrations when you have been directed by the Deputy Attorney General to seek a delay 9 days after the time expired?

Mr. GRISWOLD. No—if you say 9 days, the time hadn't expired, Senator, and the rule says that you are supposed to apply not less than 10 days before the time expires, but makes it perfectly plain that you can apply within that period, but you have got to show some reason. And I don't recall any case where we did it on the next to the last day.

On the other hand, it is not at all unprecedented that we do make applications within the 10-day period for one reason or another.

Senator KENNEDY. But have you made them at the direction of the Deputy Attorney General any time?

Mr. GRISWOLD. I don't like to accept your word "direction." This was at the request of the Deputy Attorney General. I cannot now name you some. I have had many conversations with the Deputy Attorney General about cases and have frequently heard people, usually other agencies of the Government, who have expressed an interest or concern, and I have delayed my action until I heard them. Ordinarily, however, that would not require any application for an extension of time, because we had enough time. I think this one is the only one that I know of within 1 day, and as far as I can recall, within a 10-day period.

Senator KENNEDY. Do you know Mr. Walsh at all, Dean?

Mr. GRISWOLD. Yes, I have know Judge Walsh at least since the time he was a judge, and then as Deputy Attorney General, and since.

Senator KENNEDY. But you never had occasion to talk with him about this case?

Mr. GRISWOLD. Never whatever about this case, except on Monday afternoon of this week he called me on the telephone and asked me what I said in that statement. But he didn't in any sense complain about it, he simply wanted to know what it was so that he could respond to questions that were coming to him.

I read him, over the telephone, the paragraph relating to him. And he thanked me. And I did talk with him to that extent on Monday of this week. Otherwise I have never talked with him about this case.

Senator KENNEDY. I want to thank you for coming up here this afternoon and being so helpful.

Mr. GRISWOLD. Thank you, Senator.

Senator KENNEDY. You have certainly been very forthright and candid with us, and I want to express my own personal appreciation to you. It is nice to see you again.

Mr. GRISWOLD. Thank you, Senator.

Senator HRUSKA. Dean Griswold, the 10-day rule has been mentioned often. That rule is simply this, is it not, that if there is any request for a postponement of a filing or to meet a deadline, the request for such postponement should be made at least 10 days prior to the date that is sought for extension?

Mr. GRISWOLD. That is right, Senator.

Senator HRUSKA. So that is the general rule. However, the Supreme Court does say, if it is within those 10 days, for good reason, we will still allow the postponement.

Solicitor General and his staff had some reluctance about the appeal, anyway.

This was a request merely for an extension of time. That did not affect the ultimate disposition of the case because it would not have been argued before that term, and as I think you know, the appeal was perfected subsequently, and McLaren said I see no harm in it, and I then called the Solicitor and he came in.

Senator KENNEDY. Now, can you tell us when you read the letter? Did you read Mr. Walsh's letter?

Mr. KLEINDIENST. Well, I think I read the letter comprehensively and thoroughly for the first time during these hearings.

Senator KENNEDY. So, at the time that you made your decision, it was really based on the representations that were made by Mr. McLaren as to what the substance of the letter was?

Mr. KLEINDIENST. Right, and also his characterization and representation as with respect to what the issue was in the memorandum of law, and the letter.

Senator KENNEDY. Well, now, having read the letter in connection with these hearings here, what do you think was meant by Mr. Walsh when he said, "It is our understanding that the Secretary of the Treasury, the Secretary of Commerce, and the Chairman of the President's Council of Economic Advisers all have some views with respect to the question under consideration."?

Mr. KLEINDIENST. Well, I do not like to speculate as to what Judge Walsh thought.

Senator KENNEDY. Well, you do not—did you have any reason to believe that they had views?

Mr. KLEINDIENST. No. I did not know.

Senator KENNEDY. Were you at any time in contact with the Secretary of the Treasury, or the Secretary of Commerce, or the Chairman of the President's Council of Economic Advisers about this case?

Mr. KLEINDIENST. No. No.

Senator KENNEDY. About antitrust policy generally?

Mr. KLEINDIENST. No. Well, other than—I never had a conference with Secretary Stans, or the Secretary of the Treasury, about the antitrust policy. I know that just based upon the general statements, public and otherwise, that Secretary Stans had some very sharp differences with the antitrust policy of the Department of Justice, as enunciated by the Attorney General, and effectuated by the Assistant Attorney General McLaren, and there were a lot of other people who sharply disagreed with Judge McLaren's policy, as enunciated by the Attorney General, and supported by the Attorney General, myself, and the President of the United States.

I might have the order wrong.

Mr. MCLAREN. May I add a word, Senator Kennedy?

Senator KENNEDY. Yes.

Mr. MCLAREN. I think it is fair to say that at the time we did have underway an overall antitrust kind of review going on; and I know that there were meetings going on at that time.

There was an interagency thing. I was one of the principals on it. I do not know whether or not there was any connection between this letter of Walsh's, as to which Mr. Kleindienst is perfectly right, I did disagree.

For example, he said in there, as I recall, that our policy was stopping perfectly normal, legitimate mergers that had nothing to do with effects on competition, and I strenuously argue with that.

Other parts of his legal pitch I very much disagree with. But, I—it subsequently developed that there was no connection between what he was saying and the—and no connection ever developed between what he was saying and the antitrust review we then had underway.

Senator KENNEDY. Well, Mr. McLaren, after reading the letter, particularly the part which reads—

> It is our understanding that the Secretary of the Treasury, the Secretary of Commerce, and the Chairman of the President's Council of Economic Advisers all have some views with respect to the question under consideration.

—do you remember mentioning that to Mr. Kleindienst when you gave him your summation of the letter?

Mr. MCLAREN. I do not specifically remember it, Senator, but those agencies all had representatives on this group that was reviewing antitrust policy overall.

Senator KENNEDY. And actually, some of those—wasn't that primarily the reason for the extension, as stated in the Solicitor General's presentation?

Mr. MCLAREN. That is the reason I did not oppose it, If we were talking about a straight legal proposition, as to whether or not they should have an extension, I would—I would not have agreed with that. But, for a kind of a policy review thing, I was interested to hear what developed. My information at that time was that he was—or my feeling at that time was that he was wrong.

I thought that Dr. McCracken, for example, was very much in favor of our antitrust policy, and I have never heard, although we had differences on the specifics, I never heard that Secretary Stans or the Treasury people were against it, and I subsequently turned out to be right. We had the extension, but we went ahead and filed the brief.

Senator KENNEDY. Was this the first time that you thought that the Secretary of Treasury, and of Commerce, and the Council of Economic Advisers, would have views on this particular case?

Mr. MCLAREN. Well, we had been working on this project for some length of time.

Senator KENNEDY. Well, so that did not come as anything very new to you, did it?

Mr. MCLAREN. The new thing was simply, Senator, Mr. Walsh's suggestion in the thing, and we were up against a filing date, and we simply allowed time to explore that. As it turned out, there was nothing to it.

Senator KENNEDY. Can you tell us what you found particularly persuasive about the Walsh letter that would have been the basis for——

Mr. MCLAREN. I say again, I strongly objected and was not persuaded as to the legal aspects of it.

However, as to the, particularly finding out that Mr. Kleindienst was not particularly persuaded or had no views on the thing, I had no particular objection to an additional extension of time. As I said before, extensions of time in cases like this are not novel or unusual.

Senator KENNEDY. So, we have a situation here where Mr. McLaren disagreed with the letter, and Mr. Kleindienst, you had not read it,

Senator KENNEDY. Could you tell us the conversation on the 19th? What did that involve?

Mr. KLEINDIENST. Well, it took about, I would imagine it would have taken a few seconds unless I would have talked to him about some judicial candidate. Let's assume I did not talk to him about a judicial candidate. It would have just been a matter of a few seconds Senator Kennedy.

Senator KENNEDY. And this conversation with Mr. Walsh was about the—why did you feel you had to call him back?

Mr. KLEINDIENST. I think as a courtesy. I didn't have to.

Senator KENNEDY. He had telephoned you about this case and——

Mr. KLEINDIENST. Mr. Walsh and I are very close friends and have developed a very close friendship over the 3 years as a result of our work together in the judicial program. We had the conference with Mr. McLaren and the Solicitor. The Solicitor was asked to file an extension. He said that he would and I merely called him to tell him what the decision was. I guess it was a courtesy more than anything else. I didn't have to.

Senator KENNEDY. At any time did you talk to Mr. Rohatyn about this?

Mr. KLEINDIENST. No, sir.

Senator KENNEDY. You didn't mention his name during the course——

Mr. KLEINDIENST. No, sir. I hadn't met personally Mr. Rohatyn at that time. At about that time, I would have probably—at or about that time, Mr. Rohatyn would have called me to come in and see me on the 20th, the next day.

Senator KENNEDY. Could you tell us, when Mr. Walsh called, did you tell Mr. McLaren about that telephone call?

Mr. KLEINDIENST. Did I?

Senator KENNEDY. Yes, or did you——

Mr. KLEINDIENST. I don't know if I did nor not, Senator Kennedy, because the call would have indicated that he was going to deliver the letter and the memorandum of law to me by a young man in his office. The time was rather short, as I think you can tell. The 16th—the 20th was the last day. I don't know if I did or not. I know when the young man came to my office and handed me the materials, I didn't even read them. I called Mr. Comegys or I called for Mr. McLaren and he wasn't there and Mr. Comegys came up and I handed the materials to the young man in his presence.

Senator KENNEDY. When was the final time for the——

Mr. KLEINDIENST. I believe the 20th was the last day.

Senator KENNEDY. So this was on the 16th and——

Mr. KLEINDIENST. A Friday.

Senator KENNEDY. You have no recollection of talking to Mr. McLaren about either the telephone conversation or about the letter?

Mr. KLEINDIENST. No, I don't, Senator. But I could have.

Senator, I would like to say something here, if I may. These events occurred a year ago. This wasn't the only matter that I had. It didn't seem to me to be of any particular consequence.

Senator KENNEDY. Which didn't?

Mr. KLEINDIENST. Well, these; I mean that there wasn't any particular significance to these matters other than just routine

Mr. KLEINDIENST. Gee, I think you just have to draw your own conclusions, Senator.

Senator KENNEDY. What conclusions do you draw from them, just from that language?

Mr. KLEINDIENST. You mean if I accept this language for what apparently it says?

Senator KENNEDY. You were accepting language in the letter.

Mr. KLEINDIENST. I didn't read it when I got it.

Senator KENNEDY. Oh, you didn't read this letter, either?

Mr. KLEINDIENST. No, sir, when it was delivered to me, I asked Mr. Comegys to come up and I handed the letter and the memorandum of law to him and told him that this came from Judge Walsh.

Senator KENNEDY. Well, now, let me get it straight. With Mr. Griswold and your meeting with Mr. Griswold, what did you—the action that Mr. Griswold took in behalf of the Government, was that on his initiative?

Mr. KLEINDIENST. No, as I have testified, Senator Kennedy, Friday the 16th, I delivered the letter, I handed him the letter and the memorandum of law with the young man who delivered it to me in my office. It was 3 or 4 in the afternoon—I don't know. 2, 3, 4. 5.

Then on Monday afternoon, Mr. McLaren contacted me and said, I have gone over this request of Judge Walsh and I would like to talk to you about it. He came up. We discussed it.

Senator KENNEDY. You discussed the letter?

Mr. KLEINDIENST. Well, we discussed—I don't even think I read the letter there. We discussed the request contained in the letter, Senator. We didn't pick it apart like we are doing now, analyze what Judge Walsh thought or what we thought we meant. What we were dealing with was the request contained in the letter and that is to say an extension of time in the *Grinnell* case. Mr. McLaren said, I don't agree with the contention made here.

Senator KENNEDY. I am sorry, he said what?

Mr. KLEINDIENST. He said, I don't agree with the position taken in Judge Walsh's letter.

But it seems to me inasmuch as no harm can be done by giving the extension, since the case could not be heard in that term of the court, he had no objection if we requested the extension.

At that point, I called the Solicitor General and he came down to my office while Judge McLaren was there and we asked him if he would would ask for the extension. And he said that he would, and he did.

Senator KENNEDY. You called him, as I understand it?

Mr. KLEINDIENST. Yes, I did. While the Judge was in my office.

Senator KENNEDY. Did you ask him for the extension, or did Mr. McLaren?

Mr. KLEINDIENST. I think it was a joint request.

Senator KENNEDY. Well, someone has to make the request.

Mr. KLEINDIENST. Well, let's say I did.

Senator KENNEDY. Well, did you? That is what I want to find out.

Mr. KLEINDIENST. Well, I don't recall, Senator. The Dean recollects that I did and it is so said in his statement. I don't think it makes any difference. The request came jointly from me and Judge McLaren—we weren't both talking at the same time—to have him do this, and he did.

Senator KENNEDY. Why? Can you help me——

The CHAIRMAN. Your time is up.

Senator KENNEDY. Just on this final point, just a continuation, can you help us on why, or whom you talked to in the morning, that you believed it was going to be negative and what transpired during that period of time that turned it around to be positive as Judge Walsh said?

Mr. KLEINDIENST. I think I would have talked to Judge McLaren.

Senator KENNEDY. He would have been negative or positive?

Mr. KLEINDIENST. Yes; he would have gone negative.

Senator KENNEDY. He would have been negative?

Mr. KLEINDIENST. Yes, sir.

Senator KENNEDY. Whom did you talk to that made it positive?

Mr. KLEINDIEST. Later on I believe my testimony is—my recollection is I had a meeting with the Solicitor General and Judge McLaren. I know I at least had a meeting with the Solicitor General in my office about it because without such a meeting and without his assent the extension of time would not have been filed.

Senator KENNEDY. Well, if McLaren was negative and the Solicitor was neutral on it, how did the decision come out for the 30-day extension?

Mr. KLEINDIEST. How did it come out positive?

Senator KENNEDY. Yes.

Mr. KLEINDIENST. Well, McLaren had a pretty rigid attitude about all the ITT cases and all of the attempts one way or another to, let's say, interfere with his prosecution of these cases. I believe that the reason why the extension was granted, number one, we all three knew, Judge Walsh very well, that the case was not going to be argued that term in the Supreme Court, that all they were asking for was a 30-day delay in the filing of our jurisdictional statement and that could have no prejudice one way or another upon the prosecution of the case. So it wouldn't have been a difficult or an unreasonable or an illogical thing to say, "All right, let's give them the extension of time."

Senator KENNEDY. Of course, those facts were in Judge Walsh's letter in the morning: were they not?

Mr. KLEINDIENST. Those facts about what?

Senator KENNEDY. The fact that the 30-day extension was going on——

Mr. KLEINDIENST. But I can assure you, Senator Kennedy, I had not talked to Dean Griswold when I had my telephone conversation with Judge Walsh that morning.

Senator KENNEDY. And he was negative?

Mr. KLEINDIENST. Who?

Senator KENNEDY. Judge Walsh—I mean, McLaren was negative?

Mr. KLEINDIENST. I think, yes; I think he was. You know, if it was a substantive device with respect to these cases, he was absolutely negative. When it got down to be a procedural 30-day extension of time that could not have any substantive effect on the issues in the case, then I guess he is neutral.

Senator KENNEDY. I was just trying to figure out who was positive.

Mr. KLEINDIENST. Well, I was positive about giving them the procedural 30-day period of time inasmuch as it could not affect the outcome of the cases and I think that was the attitude taken by Dean Griswold.

6. On June 17, 1971, McLaren recommended to Kleindienst that the ITT suits be settled. Kleindienst approved the proposed settlement by writing: "Approved, 6/17/71. RGK." In affixing his approval, Kleindienst relied on the expertise of McLaren.

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to the extent that ITT and its subsidiaries are able to finance foreign operations through foreign borrowings in lieu of expatriating funds or reducing the flow of funds from foreign subsidiaries to the United States.

Hartford is obviously not a major direct factor in ITT's overall favorable balance of payments posture. Hartford's impact is indirect in terms of the balance sheet strength it adds to ITT. To the extent that the divestiture of Hartford affects ITT and its subsidiaries' ability to get credit on favorable terms there would be a longer-term impact upon ITT as an earner of foreign exchange.

A final factor should be mentioned. Several hundred million dollars of ITT stock is held by foreigners. The increase or decrease in such holdings, while representing short-term investment swings, nevertheless affects the balance of payments. If ITT is a less attractive investment, without Hartford, there could be some balance of payments impact from liquidation of foreign holdings.

In addition to Hartford, the Justice Department is also seeking, through court action, the divestiture by ITT of Canteen Corporation and Grinnell Corporation, both acquired in 1969. On December 31, 1970, the U.S. District Court rendered a decision in favor of ITT in the Grinnell litigation; this decision is being appealed by the Justice Department. The Canteen litigation has not yet come to trial.

In 1970 Grinnell earned $18 million after taxes and Canteen earned $10 million after taxes. With Hartford, the three companies accounted for 12% of consolidated revenues of ITT and 33% of consolidated net income. While it is not possible here to comment with definition as to the effect on ITT of divestiture of these two companies, including their value as separate companies, the effect on ITT's capitalization, etc., it is reasonable to assume that divestiture would have some impact upon the investment community's view of ITT and the predictability of its earnings. Most likely it would result in further concern as to ITT's ability to manage consistent earnings increases and such concern would probably be reflected in a diminished multiple on the common stock.

CONCLUSION

In conclusion, I think the following statements can be made:

1. Hartford and ITT as separate companies would be valued in the market place at approximately $54 per present ITT share versus $64 ½ for the combined company on 5/14/71. This represents a 16% diminution in market value, or almost $1.2 billion.

2. A spinoff to ITT stockholders would appear to be the only feasible way of divesting Hartford. However, because of the dividend requirements of the Series N Preferred, the elimination of the dividend from Hartford to ITT would probably have a meaningful impact upon the ITT parent company and its liquidity. A logical result would be a cut in the dividend on the ITT common stock.

3. The divestiture of Hartford would have a negative impact upon the ITT parent company and consolidated balance sheets. The result would be a reduction in ITT's incremental parent company debt capacity and possibly credit rating.

4. Finally, to the extent that the changes in (2) and (3) affected ITT's consolidated credit picture, there could be some indirect negative effect upon ITT's balance of payments contributions.

RICHARD J. RAMSDEN,
May 17, 1971.

Mr. MCLAREN. I might say that the man that made that report is the same man I used in analyzing the Ling-Temco-Vought situation when we began to be concerned that that company might go down too during the course of our proceedings.

After receiving this report—the report from the Treasury, as I recall, was an oral report—we in the Antitrust Division gave very careful consideration to possible alternative means of settling the three cases, consistent with antitrust objectives, but without the massive adverse impact upon ITT and its shareholders that would attend a divestiture of Hartford.

Ultimately Mr. Hummel—who as I mentioned was the deputy director of operations—and I, with some participation by Messrs. Comegys, Carlson, and Mr. Joseph Widmar, the principal trial attorney on the *Grinnell* case, developed a proposal which was reduced

to writing in the form of a memorandum to Deputy Attorney General Kleindienst dated June 17, 1971.

I presented this memorandum to the Deputy Attorney at a regularly scheduled briefing on June 17, 1971, and he approved. I have a copy of this memorandum with me and it is attached to my prepared statement, which has been furnished to the members of the committee.

(The memorandum referred to follows:)

DEPARTMENT OF JUSTICE,
Washington, D.C., June 17, 1971.

MEMORANDUM FOR THE DEPUTY ATTORNEY GENERAL

Re Proposed Procedure in ITT Merger Cases

Background.—We have three anti-merger cases pending, against ITT: the *Grinnell* case (sprinkler systems), which was tried and lost in the District Court and is now on appeal to the Supreme Court; the *Canteen* case (vending and food service), which was tried and is now *sub judice*; and the *Hartford Fire Insurance Co.* case, which is set for trial in September.

About six weeks ago, representatives of ITT made a confidential presentation to the Department, the gist of which was that if we are successful in obtaining a divestiture order in the ITT-Hartford Fire Insurance Company case, this will cripple ITT financially and seriously injure its 250,000 stockholders. Essentially, this is because ITT paid a $500 million premium for the Hartford stock but took its assets in at book value in a so-called pooling of interests transaction. It cannot now sell its Hartford stock without (a) suffering a serious loss as opposed to what it paid but, at the same time (b) incurring a large capital gain tax. A "spin-off" to its own shareholders would be a—and probably the only—feasible alternative; however, a spin-off would leave ITT with the large preferred dividend commitment it made in acquiring Hartford ($50 million a year), but without the earning power which was counted on to cover that commitment. The result, we are told, would be a loss of well over $1 billion in ITT common stock value, a weakened balance sheet, and reduced borrowing capacity.

We have had a study made by financial experts and they substantially confirm ITT's claims as to the effects of a divestiture order. Such being the case, I gather that we must also anticipate that the impact upon ITT would have a ripple effect—in the stock market and in the economy.

Under the circumstances, I think we are compelled to weigh the need for divestiture in this case—including its deterrent effect as well as the elimination of anti-competitive effects to be expected from divestiture—against the damage which divestiture would occasion. Or, to refine the issue a little more: Is a decree against ITT containing injunctive relief and a divestiture order worth enough more than a decree containing only injunctive relief to justify the projected adverse effects on ITT and its stockholders, and the risk of adverse effects on the stock market and the economy?

I come to the reluctant conclusion that the answer is "no." I say reluctant because ITT's management consummated the Hartford acquisition knowing it violated our antitrust policy; knowing we intended to sue; and in effect representing to the court that he need not issue a preliminary injunction because ITT would hold Hartford separate and thus minimize any divestiture problem if violation were found.

Perhaps equally guilty is the trial judge, who listened sympathetically to defendants' plea that granting our motion for preliminary injunction would cost Hartford stockholders the $500 million premium ITT was paying for their stock. Obviously, if such a premium is being paid on an unlawful acqusition, the acquiring company may lose that and more if forced to divest, and will so plead if found guilty. This highlights our continuing need for amendment of the Expediting Act to permit us to appeal from District Court orders denying our motions for preliminary injunctions in such cases.

Proposed Procedure.—In order that we do not lose the deterrent we have developed in this field, I propose the following terms of settlement of the ITT cases:

1. *Grinnell*—divestiture. This would require a joint motion in the Supreme Court to refer the case back to the District Court for entry of consent order—which was the procedure the Department followed in *National Steel Corporation* (No. 31, Oct. Term, 1966).

2. *Canteen*—divestiture by consent order.

3. *Hartford*—injunction along lines of *LTV*, including particularly

(a) Prohibition for 10 years of (i) acquisition of any corporation with assets of $100 million or more; (ii) acquisition of any corporation with assets of $10 million–100 million without approval of the Department, or permission of the court; and (iii) for a period of an additional five years, prohibition of any acquisition of any corporation with assets over $10 million except on a showing that it will not tend to lessen competition or create a monopoly.

(b) Prohibition against engaging in systematic reciprocity.

(c) Divestiture of Avis and Levitt.

Finally, in all three cases, I think we should have the right to approve ITT's press releases. We want no great protestations of innocence, government abuse, etc., etc.

I recommend that you approve a program along the lines of the foregoing—allowing, of course, for some leeway in negotiating.

RICHARD W. MCLAREN,
Assistant Attorney General,
Antitrust Division.

Approved, 6/17/71.
R. G. K.

Mr. MCLAREN. This plan contemplated divestiture of Grinnell and Canteen; divestiture of Avis and Levitt; prohibition for 10 years of acquisitions of any corporation with assets of $100 million or more, or acquisitions of any corporation with assets of more than $10 million except on a showing that it would not tend to lessen competition, and so forth—that would be a showing by ITT and it would be their burden of proof; prohibition against engaging in systematic reciprocity; and certain other provisions along the lines of our LTV decree.

At the conclusion of my meeting with Mr. Kleindienst, I telephoned Mr. Felix Rohatyn from Mr. Kleindienst's office—while he was present—and outlined my proposal to him. This was at approximately 10 o'clock in the morning on June 17. Mr. Rohatyn asked certain questions about points in the proposal and repeated his understanding of the proposal as—it appeared to me—he took notes on it. I told Mr. Rohatyn that if the proposal was acceptable to ITT as a basis for a settlement, he should have ITT's trial counsel get in touch with me. I made clear that if ITT was unwilling to accept the basic outline of the proposal, with negotiation only as to details, I did not care to discuss the matter further.

On the evening of June 17, I informed Messrs. Hummel, Mahaffie and Carlson of the Antitrust Division that our proposal had been communicated to ITT's representative. I did this because Mr. Carlson and Mr. Widmar were going to take the depositions of some of ITT's top executives in New York on June 18, and I felt that they should be fully informed as to the status of the case.

Thereafter Mr. Henry Sailer, of the Covington & Burling law firm, who was trial counsel for ITT in the *Grinnell* and *Hartford* cases, as I said before, telephoned me for an appointment. Judging from the telephone record maintained by my secretary, this apparently was on June 18; we made an appointment for a preliminary discussion on June 24. At the meeting on June 24, Mr. Sailer showed by his comments that he had received a rather full and accurate account of the proposal which we had made to Mr. Rohatyn, and he inquired as to various specifics of our proposal. For example, he suggested it would be appropriate to advise Judge Austin, who then had the *Canteen* case under consideration, that we were entering into serious settlement

negotiations. Also, with respect to Canteen, he inquired if we would be willing to let ITT keep after-acquired properties, that is, those bought or constructed after the main acquisition. With respect to Grinnell, he argued that ITT should be permitted to divest only part of Grinnell, that is, the fire protection business, which had been discussed during the trial of the case. With respect to Levitt, he raised the after-acquired property point and also inquired about retaining overseas properties. He protested that there was no good antitrust reason why ITT should be forced to divest Avis. Then he asked about the negotiatibility of our provision on no acquisitions over $10 million, and so forth. I told him we would negotiate on details, but that the basic provisions of the proposal were firm.

Within the next few days we agreed internally that Carlson and Widmar should handle the negotiations, and by June 30 Carlson and Widmar had so advised Sailer, and had had a discussion with him concerning procedure.

On July 1, I met with Sailer, Carlson and Widmar and after a very short session, principally covering the points I had discussed with Sailer on June 24, I left Carlson and Widmar with Sailer to continue the negotiations.

Negotiations between Carlson and Widmar on the one hand and Sailer on the other hand continued through the month of July—a part of which time I think from about July 10 to July 20, I was in London at the ABA meeting—and in the last few days of the month, Carlson and Widmar advised me that the matter was about wound up and that it would be helpful if I would sit in on one or two sessions to cover some final points. On July 30, I agreed that we would accept divestiture of the Fire Protection Division of Grinnell, rather than insisting on full divestiture. I did so because Messrs. Carlson and Widmar, with Mr. Hummel concurring, felt that separating the Fire Protection Division from the rest of Grinnell would be a procompetitive step, putting the rest of the industry on a more even competitive basis with Grinnell, which incidentally was the leader in that particular industry, which had had a competitive advantage by reason of its vertical integration and its broad contacts in the construction business.

There were certain other minor points still in dispute, and our meeting adjourned on the evening of July 30, which was a Friday, for Mr. Sailer to consult with his client. We reconvened our meeting on Saturday morning, July 31, and ironed out the final points. Mr. Sailer then contacted ITT—and I believe they polled the directors for final approval of the proposed settlement by telephone during the day. I then prepared a press release, for immediate distribution, announcing that we had reached an agreement in principle on the terms of consent decrees which, if approved by the courts, would terminate the three cases. This was done in order to head off any further newspaper speculation, and any possible insider trading when the markets reopened on the following Monday.

In conclusion, I want to emphasize that the decision to enter into settlement negotiations with ITT was my own personal decision; I was not pressured to reach this decision. Furthermore, the plan of settlement was devised, and the final terms were negotiated, by me with the advice of other members of the Antitrust Division, and by no one else.

Mr. KLEINDIENST. No; I might have talked to Governor Nunn two or three times since I have been in the Government. I know I had one conversation in which he was interested in being a judge. And I think that is the most lengthy conversation I even had with him.

The CHAIRMAN. Your time is up.

Senator COOK. Mr. Kleindienst, just a couple of very short questions. There was, as a matter of fact, a great divergence of opinion within the administration relative to, not yourself but Mr. McLaren's policy in the Antitrust Division; was there not?

Mr. KLEINDIENST. Not only in the administration but in the country, in the legal profession.

Senator COOK. As a matter of fact, the Stigler report, that had been filed, stated that, and I quote: "vigorous action on the basis of our present knowledge of conglomerates is indefensible." And the report went on to say, and I quote again from the report which was made to the President of the United States:

> We strongly recommend that the Department decline to undertake a program of action against conglomerate mergers and conglomerate enterprises pending a conference to gather information and opinion on the economic effects of the conglomerate phenomenon.

So there was a divergence of opinion, was there not, and, as a matter of fact, as the result of Mr. McLaren's position as head of the Antitrust Division, the largest corporate divestiture that ever took place in the history of the United States occured as a result of his actions; did it not?

Mr. KLEINDIENST. Yes; not only that, but an agreement against further acquisitions.

Senator COOK. For a period of 10 years.

Mr. KLEINDIENST. Right.

Senator COOK. And as a matter of fact, at the time that this debate was going on and his actions were going on, the former head, under the former President, of the Antitrust Division took the position that the position of this administration in its antitrust policies was wrong?

Mr. KLEINDIENST. That is correct.

Senator COOK. Did he not?

Mr. KLEINDIENST. Dr. Turner.

Senator COOK. Thank you, Mr. Chairman.

The CHAIRMAN. Birch.

Senator BAYH. Mr. Kleindienst, the last question I asked before deciding there was nothing to be gained in pursuing other questions was something to the effect that were you aware of the Ramsden report and you—I mean, were you aware of its specifics—and you said, as I recall, you were not aware of any of the specifics at all?

Mr. KLEINDIENST. Never read it.

Senator BAYH. And, as I recall the hearing, at least part of the answer to the last question was that your reliance on Judge McLaren was really the whole reason this case was resolved as it was.

Mr. KLEINDIENST. You mean that Judge McLaren recommended this solution?

Senator BAYH. Yes, sir.

Mr. KLEINDIENST. That is the only reason why I went along with it. He recommended it.

Senator BAYH. Was that recommendation and the reasons for it that compelled you to accept his judgment contained primarily in the

memorandum that we have all read? It is on page 111 of the record, "Memorandum for the Deputy Attorney General Re Proposed Procedure in ITT Merger Cases." If you are not familiar with the Ramsden memo, are you familiar with that memo?

Mr. KLEINDIENST. I do not have any present recollection of having read it. Mr. McLaren would send me a memorandum and then what we would usually do is discuss it, which would save me a lot of time and it also gave him an opportunity to present it, I think, a little bit more clearly. I might have read it, Senator Bayh. I do not know.

Senator BAYH. This is a memorandum, if I might try to ask you to refresh your memory, which was dated June 17, 1971, and which lists in some detail the reason why you are recommending the settlement, if it is approved, and it is "Approved. June 17, 1971. RGK."

Mr. KLEINDIENST. Right.

Senator BAYH. Then I understand that after this ITT was called.

Mr. KLEINDIENST. Right.

Senator BAYH. Does that refresh your memory?

Mr. KLEINDIENST. Yes, it does. Now I know the memorandum you are talking about. Whether I read it or not in its entirety is doubtful to me. Mr. McLaren would have discussed it with me and I would have approved it in writing just so it would show it was approved in his file. After that we called Mr. Rohatyn and Mr. McLaren outlined the broad outlines of the proposed settlement to him.

Senator BAYH. When a man like Judge McLaren, your assistant, makes recommendations like that, of this consequence, is it your judgment to take the memorandum and its discussion at face value or do you try to substantiate it with, from other sources?

Mr. KLEINDIENST. No, I have never tried to substantiate a recommendation or opinion of Judge McLaren from any other source. I have read complaints or memoranda and have raised questions about it, and then have had a conference, and had it explained to me, and I guess, Senator Bayh, the antitrust law is probably the most specialized form of the art that we have. Consequently, you have to make a judgment whether you have go a competent lawyer in the field, and I do not think anybody challenges McLaren on that; and then, second, whether he is a man of integrity, so that when he tells you something you know what his reason for telling you something is. I think it would have been presumptuous for me to go out and hire a consultant to check on McLaren in a field of law about which I then knew very little and about which I still know very little, although I have learned a little bit more about it.

Senator BAYH. I must say I have the greatest sympathy with you in your description of the antitrust law being complicated. I would find it much more so than you. And I would be inclined, I suppose, to rely on a man with Judge McLaren's expertise. I keep coming back to this inconsistency and perhaps you can help us out on this. If we are to accept your reasoning, rationale, which I am prepared to do, relative to the ITT case, why is it again you did not go along with Mr. McLaren's advice on the *Warner-Lambert* case?

Mr. KLEINDIENST. That is the one exception, and I guess that hopefully proves the rule. When the *Warner-Lambert* situation came up, as I try to recollect it again, I was out of town, I got a call from Mr. Mitchell, wherever I was, on a Friday afternoon or a Saturday morning, indicating that they had come up with a recommendation

7. Settlement initiations had taken place in late 1970. ITT's settlement posture advanced included its keeping the Hartford Fire Insurance Company. McLaren rejected any settlement talk along that line.

In early 1971, ITT began to formulate a plan, based on economic theory, of why it was important for ITT to retain Hartford. Eventually, on April 29, 1971, ITT made an economic presentation to the Department of Justice on national economic consequences if ITT were forced to divest itself of Hartford. As a result of that presentation, in combination with the Ransdem Report from his own independent financial expert, McLaren proposed a settlement offer enabling ITT to retain Hartford.

Form DJ-150
(Ed. 4-[illegible])

UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF JUSTICE

JWPoole:dmh

TO : Files

DATE: August 7, 1970

FILE: 60-270-037-1

FROM : John W. Poole, Jr., Assistant Chief
General Litigation Section

SUBJECT: United States v. International Telephone and Telegraph Corporation (Canteen): Conference with Defendant's Counsel

On August 6, 1970, Hammond Chaffetz and William Jentes of the Kirkland Ellis firm called on Mr. McLaren in Washington to discuss possible settlement or disposition of the captioned case. Gerald Connell and I were also present.

Mr. Chaffetz contended that the Government's evidence elici so far is so weak that the case ought to be dropped. He and Mr. Jentes adverted among other things to what they described as the extremely small number of "reciprocity" incidents revealed in the recent depositions of the Government's proposed witnesses Fishman, Walsh and Manthy. They mentioned also that of all the possible incidents which have cropped up in Canteen documents in only 10% of these instances has Canteen gotten business. Overal Mr. Jentes said that the incidents of reciprocity which the Government intends to prove are insignificant given the size of this industry.

Mr. Chaffetz also admitted that at one time Canteen had practiced reciprocity as "everyone" had practiced reciprocity because it was understood that it was legal if coercion was not used. He said that this was no longer the case and particularly in view of ITT's management it was unrealistic to expect Canteen to engage in reciprocity.

Mr. Chaffetz also asserted that ITT would only improve Canteen's operations and this would redound to the benefit of the industry as a whole. (Mr. Jentes hastened to add that the management improvements ITT would make were not of a sort which would be available only to large firms.)

Mr. McLaren stated his intention to pursue the case, pointing out that the reciprocity issue was only half the case; there was also a major issue of the trend toward concentration through mergers, a trend in which ITT has been a leader and a prime contributor and one which runs afoul of the concerns voiced in the legislative history of the Celler-Kefauver Act.

Mr. Chaffetz said that although he had not spoken to Mr. Geneen of ITT on the subject he thought that ITT might be willing to consider an injunction of some years duration against further acquisitions as a means of settling the pending antitrus cases. He also stated that if the facts warranted it, ITT would be willing to settle the Canteen case on the entry of an order along the lines of that entered against U.S. Steel. Mr. McLaren indicated that he felt that divestiture was the proper remedy here.

Mr. Chaffetz asked whether this was regarded as a "test case" and Mr. McLaren challenged that characterization, pointing out that this was one of a group of cases where the grounds for Government suit had been clearly described to the proposed defen before suit was brought.

August 18, 1971

MEMORANDUM CONCERNING NEGOTIATIONS
FOR SETTLEMENT OF ITT CASES

Three cases were filed with respect to ITT acquisitions: Canteen Corporation, Grinnell Company and Hartford Insurance Company, all in 1969. At various times in 1970, overtures were made by counsel to settle these cases and in every case counsel was advised that the cases could be settled but a sine qua non was divestiture of at least Hartford and Grinnell.

In November of 1970, Ephraim Jacobs of the law firm of Hollabaugh & Jacobs of Washington, representing ITT, visited me and proposed that ITT would be willing to divest Canteen, the principal parts of Grinnell and ITT-Levitt as well as certain other subsidiaries of ITT which might be agreed upon, provided that they could retain Hartford. I said that this was out of the question. Jacobs later wrote me a letter substantially confirming the discussion we had.

At some time in March, we were advised by ITT representatives that ultimate divestiture of Hartford would be almost a fatal blow to ITT and that they would like to make a presentation to establish this fact and to establish a basis for negotiations for settlement without a Hartford divestiture. Arrangements were made and a meeting was held in this office* attended by the following representatives of ITT:

Howard J. Aibel, Senior Vice President
and General Counsel
Felix Rohatyn, director of ITT, member of
Lazard et Freres
Henry P. Sailer, Covington & Burling

and as special consultants:

Dr. Raymond Saulnier, Columbia University
Willis J. Winn, Wharton School, University
of Pennsylvania

* On April 29, 1971

Representing the government were Deputy Attorney General Richard Kleindienst, Messrs. Comegys, Hummel, Mahaffie, Carlson and myself of the Antitrust Division, and Bruce MacLaury and Timothy Green of the Treasury Department.

The substance of the ITT presentation was that a Hartford divestiture would cost the ITT stockholders approximately $1 billion. The reasons for this are varied but include the fact that ITT paid a $500 million premium for Hartford; it would have to pay a very large capital gain tax on a sale of its Hartford stock; and if it spun off the Hartford stock to its stockholders, it would be left with an unmanageable issue of preferred stock.

Following the meeting, we requested the Treasury representatives and an outside consultant to evaluate the ITT claims.

Shortly after the middle of May, these experts reported that there was substantial support for the arguments made by ITT and that a Hartford divestiture would indeed be very difficult for ITT and, because of changes in the law and in accounting practice, such a divestiture would probably entail a very large loss to ITT stockholders.

Following this report, there was consideration in this office of alternative means of settling the case consistent with antitrust objectives, and Mr. Hummel and I, with some participation by Messrs. Comegys, Carlson and Widmar, developed a proposal.

This culminated in a memorandum which I prepared for the Deputy Attorney General dated June 17, 1971. I presented this memorandum to the Deputy personally at approximately 8:30 in the morning on June 17, and after considerable discussion, he approved our plan of settlement.

This plan contemplated divestiture of Grinnell and Canteen; divestiture of Avis and Levitt; prohibition for 10 years of acquisitions of any corporation with assets of $100 million or more, or acquisition of any corporation with assets of more than $10 million except on a showing that it would not tend to lessen competition, etc.; prohibition against engaging in systematic reciprocity; and other provisions along the lines of our LTV decree.

At the conclusion of our discussion, Mr. Kleindienst and I telephoned Mr. Rohatyn at approximately 10:00 A.M. June 17 and outlined this proposal to him. Mr. Rohatyn apparently took notes on the proposal; he asked certain questions about details of the proposal. We suggested that if this appeared to present a reasonable basis for settlement, with negotiation as to details, to have ITT's counsel get in touch with us.

On the evening of June 17th, I informed Messrs. Hummel, Mahaffie and Carlson that this offer had been communicated to ITT's representatives.

Thereafter, Henry Sailer telephoned for an appointment (apparently on June 18) and came in for a preliminary discussion on June 24. He had received a rather full and accurate account of the proposal I had made to Rohatyn and he inquired as to certain specifics of our proposal. For example, he suggested it would be appropriate to advise Judge Austin, who then had the Canteen case under consideration, that we were entering into serious settlement negotiations. With respect to Canteen, he inquired if we would be willing to let ITT keep after-acquired properties. With respect to Grinnell, he strongly urged that ITT be forced to divest only part of Grinnell, i.e., the Fire Protection business. With respect to Levitt, he raised the after-acquired property point and also inquired about retaining overseas properties. He protested that there was no good antitrust reason why ITT should be forced to divest Avis. Then he asked

about the negotiability of our provision on no acquisitions over $10 million, etc.

Within the next few days we agreed internally that Carlson and Widmar should handle the negotiations, and by June 30 Carlson and Widmar had so advised Sailer and had had a discussion with him concerning procedure.

On July 1st, I met with Sailer, Carlson and Widmar and after a very short session, principally covering the points I had discussed with Sailer on June 24, I left Carlson and Widmar with Sailer to continue the negotiations.

The negotiations continued through the month of July and we reached our ultimate agreement on Saturday, July 31. (On July 30, we indicated for the first time we would accept divestiture of the Fire Protection Division of Grinnell rather than insisting on full divestiture.) Carlson and Widmar have notes of their discussions, and their notes and memories would be the best source of information concerning the time when substantial agreement was reached.

* * *

The foregoing was dictated in the presence of Messrs. Comegys and Hummel of the Antitrust Division, and Messrs. Rossen and Borowski of the SEC.

RICHARD W. McLAREN
Assistant Attorney General
Antitrust Division
Department of Justice

- x

In the Matter of :

TRANSACTIONS IN THE SECURITIES :

OF INTERNATIONAL TELEPHONE AND :

TELEGRAPH CORPORATION :

File No. HO-536 :

- x

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

HAROLD S. GENEEN, being duly sworn, says:

1. I am the President and Chief Executive Officer of International Telephone & Telegraph Corporation ("ITT").

2. I submit this affidavit to provide the Commission with information concerning a rough draft memorandum dated May 5 1971 (Exhibit A hereto) which I prepared for the use of internal counsel at ITT.

3. The background of this May 5 draft memorandum is a follows:

In about January 1971, I was informed that Assistant Attorney General Richard McLaren had rejected a proposal by ITT to settle the three antitrust cases pending against it and had inquired why ITT was so insistent against having a divestiture of Hartford Fire Insurance Company ("Hartford") included in any possible settlement. We understood Mr. McLaren's question to me that it would take a detailed financial and economic presentation on the importance of Hartford to ITT to persuade the Justice

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Department that divestiture of Hartford could not realistically t expected to be part of any voluntary settlement of these three antitrust cases.

Accordingly, preparations thereafter began for a presen tation to the Department of Justice on the adverse economic and financial impact on ITT and national policy concerns which a divestiture of Hartford would have and it was eventually decided that Mr. Felix Rohatyn, an ITT director and a acknowledged expert in the financial community, should take the lead in making this presentation to the Justice Department. For this purpose, arrang ments were made for Mr. Rohatyn to see Deputy Attorney General Richard Kleindienst on April 20, 1971 (Attorney General John Mitchell having previously disqualified himself from acting on these cases).

Mr. Rohatyn met with Mr. Kleindienst on April 20, and made a preliminary economic presentation on the importance of Hartford to ITT and the national ecomony. I understand that following the meeting arrangements were made for a full-scale presentation by ITT to Mr. McLaren and others on this subject for April 29. It is my recollection that Mr. Rohatyn also reported to me that, during the April 20 meeting, he had suggested to Mr. Kleindienst that the maximum divestiture which he felt he would personally recommend to the ITT Board of Directors in an overall voluntary settlement of the three antitrust suits against Hartford, Canteen and Grinnell would be a divestiture of Canteen and Grinnell. Mr. Rohatyn told me that Mr. Kleindienst did not respond to this statement and there was no further discussion on the subject. While I recognized that as a practical matter the Department of Justice might insist upon

of an overall settlement, I was concerned that Mr. Rohatyn's statement might preclude us in the future from negotiating a lesser divestiture with respect to Grinnell. I took the positio that ITT had not violated any antitrust laws, as demonstrated by Judge Timber's final decision in our favor in the Grinnell case December 30, 1970, and that consequently ITT should not be required to make a complete divestiture of both Grinnell and Canteen.

On April 29, Mr. Rohatyn led the full-scale ITT presen tation to Mr. McLaren, Mr. MacLaury of the Treasury Department, members of their staffs, and Mr. Kleindienst, with respect to th economic importance of Hantford to ITT and to the national economy. I was informed that there was no discussion of possibl settlement terms in connection with that meeting.

Upon reviewing the materials which were left with Mr. McLaren in the course of the April 29 presentation (Exhibit B hereto), I felt that several points should be further amplified. Consequently, I suggested to Howard Aibel, ITT's General Counsel and to Mr. Rohatyn that a follow-up letter should be sent to Mr. McLaren. This was done by a letter of May 3, 1971 (Exhibit C hereto). In the course of my discussions with Messrs. Aibel, Rohatyn and Scott Bohon, ITT's Assistant General Counsel, with respect to preparing this letter, we also discussed what other steps might be taken to follow-up the economic presentation of April 29. It was decided that Mr. Rohatyn would attempt to set up another meeting with Mr. Kleindienst for about May 10, 1971. In preparation for such a meeting Mr. Bohon wrote a memorandum f Mr. Aibel dated May 4, 1971 (Exhibit D hereto), a copy of which he also gave to me, pointing out some of the practical financial

management and other problems which would be involved in a possi total divestiture of Grinnell and the importance of Grinnell to ITT's diversification.

It is my recollection that after receiving a copy of Mr. Bohon's May 4 memorandum, I then dictated a rough draft memorandum of my thoughts on this subject, which is the memorandum dated May 5, 1971 (referred to in paragraph 2 of this affidavit). It is my recollection that I sent this rough draft memorandum to Mr. Bohon. I do not recall whether I also gave a copy of this draft memorandum to Mr. Rohatyn, but I may have done so.

In the course of my conversations with Mr. Rohatyn, I recognized that his statement to Mr. Kleindienst on April 20 concerning a divestiture of Canteen and Grinnell might be interprete as a commitment as to the outside limit to which ITT would be prepared to go. Accordingly, I agreed that if the subject of possible settlement terms came up in any subseqent meeting with the Justice Department and he was not successful in gaining accep ance of the idea of only a partial Grinnell divestiture, he could fall back to the statement he had made to Mr. Kleindienst on April 20. It was this statement by Mr. Rohatyn that I refer to in paragraph 1 of my rough draft memorandum of May 5 as "the offe of Grinnell."

However, because I earnestly did not believe that a total Grinnell divestiture was really necessary from the Justice Department's standpoint, paragraph 2 of my May 5 memorandum goes on to set forth possible courses of argument for counsel to develop on this subject in preparing for any future meetings. It was my thought that we should try to persuade the Department of Justice that a partial divestiture of Grinnell's Fire Protection Division should really be sufficient to satisfy the Government's

antitrust theories. We had won the Grinnell case decisively on the merits, and the Fire Protection Division was the only portic of the company involved in the proposed appeal by the Government I felt strongly that it would be manifestly unfair and unnecessa for ITT to be required to divest all of Grinnell when there were not even any anti-competitive charges involving most of Grinnell business operations. I understand that Mr. Bohon then prepared final memorandum dated May 7, 1971 (Exhibit E hereto), using cer tain of the material in my rough draft memo of May 5, which communicated our final suggestions as to the points Mr. Rohatyn might make if the subject of a possible Grinnell divestiture should come up. Our position in this respect is set forth in greater detail in another May 7, 1971 memorandum prepared by Mr. Bohon, captioned "The Grinnell Antitrust Case" (Exhibit F hereto which was also given to Mr. Rohatyn.

4. After Mr. Rohatyn met with Mr. Kleindienst on May 10, he reported to me that the conversation was essentially confined to a repetition of the economic and financial points made during the April 29 meeting and in the follow-up letter of May 3 Mr. Rohatyn said that he briefly mentioned that the Justice Department should not require ITT to divest any portion of Grinnell other than its Fire Protection Division since that was the only part of Grinnell which was involved in any potential antitrust problems. But, Mr. Rohatyn reported that Mr. Kleindienst made no response to this point and that there was no discussion at all of any possible settlement terms.

5. Thereafter I received no further information about the Justice Department's reaction to our economic presentation

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until June 17, 1971 when, as I have previously testified before the Commission, I was told by Mr. Rohatyn of a telephone conversation he had had that morning with Messrs. McLaren and Kleindienst in which they informed him that the Justice Department's "negotiating position" for a settlement of the three antitrust cases would permit ITT to retain Hartford but would require divestiture of four large companies - Canteen, Grinnell, Avis, Levitt - and would impose severe restriction against future domestic acquisitions and against possible reciprocity practices. As I have also testified, both Mr. Rohatyn and I were surprised and dismayed by that "negotiating position" since we considered that the price the Justice Department was suggesting for settlement was "very steep", and was one which in no event would we recommend that ITT accept (Tr. 9-12, 19). Prior to that time - as is shown in my May 5 rough draft memorandum - the maximum voluntary divestiture which I had even contemplated was divestiture of the two other companies whose acquisitions were directly challenged in the Government's lawsuits, Canteen and Grinnell. And even in that respect, as is illustrated by my May 5, 1971 rough draft memorandum, I was extremely reluctant for what I sincerely considered to be very valid reasons to agree to any complete divestiture of Grinnell. Furthermore, I should emphasize that any willingness on our part to even consider a divestiture of all of Grinnell was only in the context of an overall settlement which would require divestiture of two companies - Grinnell and Canteen. Certainly, when the Department of Justice, on June 17 and thereafter, insisted upon a divestiture of the four large companies, a total divestiture of Grinnell from my point of view was simply out of the question.

6. As the Commission is aware, Mr. McLaren disagreed for some time with our position that a complete divestiture of Grinnell should not be required as part of an overall settlement of the three antitrust cases. It was not until July 30-31, 1971 when a settlement agreement was reached, that he withdrew from this position.

Harold S. Geneen

Sworn to before me this
12th day of June, 1972

Joyce A. Edwards

JOYCE A. EDWARDS
Notary Public, State of New York
No. 30-1[illegible] Nassau County
Cert. [illegible] New York County
Commission Expires March 30, 1973

pont, where the Supreme Court says that if the parties put themselves in this kind of a position that it is not a legal reason to forgive the violation of section 7.

Now, I do not think a prosecutor can quite take that attitude. I felt that we in the Antitrust Division had to have in mind the effect that it would have on all of these hundreds of thousands of shareholders, and the ripple effect it might have on the economy.

Senator KENNEDY. Mr. Kleindienst, were you acquainted with anyone from ITT before Mr. Rohatyn called in April?

Mr. KLEINDIENST. Was I acquainted with anybody?

Senator KENNEDY. Yes.

Mr. KLEINDIENST. There is only one person in ITT who I have ever been acquainted with, and that is a Mr. Ryan who is employed by that company in Washington, D.C., and he lives in my neighborhood in McLean.

Senator KENNEDY. Could you describe that relationship? Is it purely social, or is it a relationship——

Mr. KLEINDIENST. It is a very casual social relationship. Once or twice a year the neighborhood has a Christmas party or neighborhood party, and then I see Mr. Ryan.

Senator KENNEDY. But there has never been a professional relationship between you?

Mr. KLEINDIENST. None at all, sir.

Senator KENNEDY. Had you ever heard of Mr. Rohatyn before his call?

Mr. KLEINDIENST. No, sir.

Senator KENNEDY. He was not introduced to you by anyone?

Mr. KLEINDIENST. No, sir.

Senator KENNEDY. Did he refer to anyone in calling you?

Mr. KLEINDIENST. No, sir.

Senator KENNEDY. He just called you out of the blue, and you took his call?

Mr. KLEINDIENST. Well, he identified himself as a representative of the company. I think he knew who I was, my responsibilities in the Department.

Senator KENNEDY. And you took his call, without knowing what he was calling about, just because he was a director of ITT?

Mr. KLEINDIENST. Yes, sir, I did.

Senator KENNEDY. Even though you did not know him or had been unaware of him?

Mr. KLEINDIENST. Yes, sir, based upon the identification given, I did.

Senator KENNEDY. Now, in your conversation with Mr. Rohatyn, did you ask him whether he had already presented his arguments to Mr. McLaren?

Mr. KLEINDIENST. No. He prefaced his remarks by saying he was not a lawyer and he did not want to come in and discuss this thing from a legal standpoint, but based upon I call it economics, but I guess financial and economic considerations.

Senator KENNEDY. Well, you are certainly a lawyer.

Mr. KLEINDIENST. I used to be, Senator Kennedy.

Senator KENNEDY. And he, in this conversation, did it not seem appropriate——

7E. FELIX ROHATYN LETTER, MAY 3, 1971

FELIX G. ROHATYN
44 WALL STREET
NEW YORK 5, N.Y.

May 3, 1971

The Honorable Richard W. McLaren
Assistant Attorney General in
Charge of the Antitrust Division
Justice Department
Washington, D.C.

Dear Mr. McLaren:

I am writing this letter to amplify and augment a point which was made in the course of the discussion which we had in your office last Thursday, in the hope that its importance will not be overlooked even though it was not fully developed in the brief summary memorandum which was left with you, Mr. Kleindienst and Mr. MacLaury.

The point is that in the event a divestiture of the Hartford was carried out by ITT through some kind spin-off, ITT would be placed in a very difficult cash position which would severely impact its ability to co pete in markets abroad. There could be as much as a 4 reduction in cash available to ITT. This shortfall in available cash would arise from the reduction of earnings by $88.7 million on such spin-off while the fixed obligation to pay dividends of $50,000,000 on the Seri N preferred stock would continue, since as I explained extensively at the meeting, the exchange could not pra ticably be made for the Series N stock. These reducti would in turn adversely affect borrowing power by an equal amount since every dollar of retained earnings w support a dollar of borrowing. This shortfall is illustrated by the following table:

The Honorable Richard W. McLaren
May 3, 1971
Page Two

1970 Earnings and Dividends with Proforma Adjustment to Put N Preferred from Partial Year to Annual Basis

			1970	
			Consolidated	Excludi Hartfo
			(Millions)	
Net Income			$353.3	$265
Dividends Paid and Proforma for N Preferred				
All Preferreds Except N		$40.7		
N Preferred for Hartford - Paid in 1970 Partial Year	$26.0			
N Preferred for Hartford - Proforma to Bring to Annual Amount	24.0	50.0		
Preferred Dividends		90.7		
Common Dividends		71.4		
Total		$162.1	162.1	162.
1970 Retained Earnings after Adjustment for 1970 to Put Hartford N Preferred on Annual Dividend Basis			$191.2	$103.
Borrowing Capacity on 50/50 Overall debt/equity ratio			191.2	103.
Total Cash Available From Retained Earnings			$382.4	$207.
Shortfall in Cash Source to Reduction in Earnings due to Extension of Hartford and Retention of Series N Dividend Obligation.				$175. or drop of 46%

While the cash problem would be ameliorated to s: extent by spinning off the Hartford shares in exchang: for ITT shares, thereby reducing partially the total dividend requirement for ITT common shares, the short· fall in available cash would still be a major concern several reasons. Among these are (1) the Series N pr: ferred dividend requirement of $50,000,000 would rema; and (2) the exchange ratio offered to ITT shareholder: would undoubtedly have to be more than one share of Ha ford for each share of ITT common tendered in order t: induce the exchange. As a result of being required t: offer a substantial discount the number of ITT shares retired could be as little as one half the 22 millio: Hartford shares, distributed, and certainly no more than three-fourths.

You will remember, I am sure, that at the meetin: Dr. Saulnier pointed out that the credit worthiness o: borrower in foreign capital markets such as ITT is heavily dependent on the value which is placed on its common stock on the stock exchanges here, and on the credit rating which its outstanding debt securities receive. Dean Willis Winn, in his remarks particular: referred to the importance of the credit worthiness o: a U.S. based company in the United States to successfu financing abroad, a major requirement for companies w: foreign operations like ITT's in light of the current balance of payments situation.

A major reduction in available cash such as that demonstrated above, will, in addition to having the obvious adverse operational impacts which inevitably : a contraction of cash, have an adverse impact on equi: values as dividends on the common stock come under pr: sure. Such a cash shortfall would also undoubtedly h: an adverse impact on the holders of outstanding ITT d: instruments and on ITT's ability to raise additional funds through debt financing here, but more significa: abroad.

Among the adverse consequences to the nation tha would inevitably follow from the requisite contractic by ITT of its foreign operations is loss of market shares to major foreign competitors such as Ericsson, Siemens, Philips, Nippon Electric and Hitachi. Loss of market shares abroad can only result in a diminuti of the cash which ITT would have otherwise repatriate to the United States. It would appear contrary to th national interests of this country to take conscious actions which would have such an adverse impact on th balance of payments.

Thank you once again for the courtesies which we extended to me, Dr. Saulnier, Dean Winn, and counsel. We very much appreciated the opportunity to discuss the overall policy implications of this situation wit you, Mr. Kleindienst and Mr. MacLaury.

Very truly yours,

Felix Rohatyn

cc: The Honorable Richard G. Kleindienst
Deputy Attorney General
Justice Department
Washington, D.C.

The Honorable Bruce MacLaury
Deputy Under Secretary for Monetary Affairs
Treasury Department
Washington, D.C.

$100,000 with an agreement for a further $100,000 matching contribution, and that in his view, it was a normal substitute for advertising expenditures of the San Diego Sheraton Hotel.

Senator BAYH. How is that kind of decision made? Is nobody on the board taken into consideration, the executive committee?

Mr. ROHATYN. Oh, no, Senator; we would no more go into a thing like that than we would the advertising budget of Avis. This is or should be a routine matter; maybe we will have some different rules in the future. But in any case, expenditures of that kind for normal business purposes would not come up to the board.

Senator BAYH. Were you ever on the board of ITT-Sheraton?

Mr. ROHATYN. No, sir.

Senator BAYH. Thank you, sir.

Judge McLaren, let me throw a few more questions at you very quickly here if I may.

Could you enunciate a bit more specifically the whole reasoning that necessitated or that resulted in your changing your feeling about accepting the negotiation? What really concerns me is that the impact on stockholders is important, the impact on the economy is important. But if we have a corporate merger that violates the law, have we gotten ourselves in the position that if the merger is big enough, it doesn't make any difference what the law says?

Judge MCLAREN. Senator, I think that doesn't really fairly express the situation. Let me put it to you this way. I think that a responsible enforcement officer has to take into account the overall impact of what he is bringing about. Up until they came in and proved to my satisfaction that it was going to tremendously weaken ITT and was going to cost their stockholders something over a billion dollars, I saw no reason for settling this case short of a divesture. I thought that they made their bed, they could lie in it.

Now, when it became clear to me that we were talking about this kind of devastating effect on them, then I began to think in terms of what kind of a settlement we could work out that would achieve our antitrust objectives and would not get into this kind of a tremendous adverse effect upon the company and its shareholders. I use the paring-off kind of analysis that I explained a little while ago to Senator Hart.

If you look at ITT as it was before the Hartford acquisition and you say to yourself, what can I pare off of ITT such that if they had not owned those companies that are pared off, I would not have filed suit against their acquisition of Hartford? Now, one of the things that we objected to was the fact that the Grinnell Fire-Safety Division was tied into this complex and Hartford——

Senator BAYH. May I interrupt?

You have been very kind and I think you have already gone through this.

Judge MCLAREN. Yes, sir.

Senator BAYH. And I remember it. It is in the record at least once or twice. I don't want you to have to labor through that again. I understand that weighing and slicing and trying to come up with something that you feel—and I have the greatest respect for your judgment and your expertise—would conform to the law.

What I was trying to get at is what philosophical responsibility do we have in Government? I am concerned about stockholders losing

Mr. KLEINDIENST (continuing). "The nondivestiture of Hartford but they have to do other things." I said, "If that is good enough for you that is fine with me" and we called up Rohatyn.

The CHAIRMAN. We will recess now until after the rollcall.

(A recess was taken.)

The CHAIRMAN. Let us have order.

Senator Bayh, proceed.

Senator BAYH. Mr. Kliendienst, the whole thing is rapidly moving toward the witching hour.

The whole sum and substance of the reason for subjecting you and various individuals associated with ITT to these hearings goes to the thrust of the Government case against ITT and why its position was changed. When we just left to go to vote I think you said you really did not discuss the memorandum, the McLaren memorandum, with Mr. McLaren. That you just took his judgment and he said this is what ought to be and you just initiated it; is that accurate?

Mr. KLEINDIENST. Well, he outlined in precise detail his proposed framework for a settlement, and gave me his reasons for it. Those were very persuasive reasons.

Senator BAYH. And those reasons were, again?

Mr. KLEINDIENST. Beg you pardon?

Senator BAYH. Those reasons were, again?

Mr. KLEINDIENST. Well, he had become convinced with respect to the financial implications involved in the situation, having become so convinced because of the sensitive relationships of Hartford to the ITT conglomerate, that if they were going to keep that then they were going to be required to divest themselves of other assets substantially equal to Hartford, and also assets that would tend to reduce or eliminate the noncompetitive aspects of the ITT conglomerate.

Senator BAYH. Could I read from the memo to refresh your memory——

Mr. KLEINDIENST. Sure.

Senator BAYH (continuing). To see if the substance contained in the memorandum was discussed with you because it is complicated?

Mr. KLEINDIENST. Sure, you certainly may.

Senator BAYH. Did Mr. McLaren suggest in discussion or did you read what it says in the memo, and it says:

> This will cripple ITT financially and seriously injure its 250,000 stockholders. Essentially, this is because ITT paid a $500 million premium for Hartford * * *. The result, we are told, would be a loss of well over $1 billion in ITT common stock value, a weakened balance sheet, and reduced borrowing capacity.

Did that——

Mr. KLEINDIENST. That is what I meant to imply when he said that he had become persuaded with respect to the financial impact of a divestiture of Hartford.

Senator BAYH. Then he says:

> We have had a study made by financial experts and they substantially confirm ITT's claim as to the effect of a divestiture order.

Mr. KLEINDIENST. Well, I am sure he must have alluded to that but I——

Senator BAYH. In other words, the thrust was the damage the divestiture would have on ITT stock?

Mr. KLEINDIENST. Yes, sir; that is the reason Judge McLaren changed his mind, the variety of financial reasons, the balance of

8. On July 31, 1971, the ITT cases were finally settled. Whether ITT would have to divest itself completely of Grinnell was a principal matter of consideration between June 17, the date of McLaren's proposal, and July 31, and in ITT's eyes, a matter upon which any settlement hinged.

According to McLaren and Kleindienst, McLaren and his staff were responsible for the settlement. Kleindienst did not talk with McLaren about this matter at any time from June 17 until July 30. Mitchell and McLaren never talked with each other about the cases. There exists no testimonial or documentary evidence to indicate that the President had any part, directly or indirectly, in the settlement of the ITT antitrust cases.

McLaren was unaware of any financial commitment by ITT in regard to San Diego's hosting of the Republican National Convention until long after the negotiations had terminated. McLaren has stated ITT's contribution had nothing to do with the settlement.

Page

- x

In the Matter of :

TRANSACTIONS IN THE SECURITIES :

OF INTERNATIONAL TELEPHONE AND :

TELEGRAPH CORPORATION :

File No. HO-536 :

- x

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

HAROLD S. GENEEN, being duly sworn, says:

1. I am the President and Chief Executive Officer of International Telephone & Telegraph Corporation ("ITT").

2. I submit this affidavit to provide the Commission with information concerning a rough draft memorandum dated May 5, 1971 (Exhibit A hereto) which I prepared for the use of internal counsel at ITT.

3. The background of this May 5 draft memorandum is as follows:

In about January 1971, I was informed that Assistant Attorney General Richard McLaren had rejected a proposal by ITT to settle the three antitrust cases pending against it and had inquired why ITT was so insistent against having a divestiture of Hartford Fire Insurance Company ("Hartford") included in any possible settlement. We understood Mr. McLaren's question to mean that it would take a detailed financial and economic presentation on the importance of Hartford to ITT to persuade the Justice

management and other problems which would be involved in a possible total divestiture of Grinnell and the importance of Grinnell to ITT's diversification.

It is my recollection that after receiving a copy of Mr. Bohon's May 4 memorandum, I then dictated a rough draft memorandum of my thoughts on this subject, which is the memorandum dated May 5, 1971 (referred to in paragraph 2 of this affidavit). It is my recollection that I sent this rough draft memorandum to Mr. Bohon. I do not recall whether I also gave a copy of this draft memorandum to Mr. Rohatyn, but I may have done so.

In the course of my conversations with Mr. Rohatyn, I recognized that his statement to Mr. Kleindienst on April 20 concerning a divestiture of Canteen and Grinnell might be interpreted as a commitment as to the outside limit to which ITT would be prepared to go. Accordingly, I agreed that if the subject of possible settlement terms came up in any subseqent meeting with the Justice Department and he was not successful in gaining acceptance of the idea of only a partial Grinnell divestiture, he could fall back to the statement he had made to Mr. Kleindienst on April 20. It was this statement by Mr. Rohatyn that I refer to in paragraph 1 of my rough draft memorandum of May 5 as "the offer of Grinnell."

However, because I earnestly did not believe that a total Grinnell divestiture was really necessary from the Justice Department's standpoint, paragraph 2 of my May 5 memorandum goes on to set forth possible courses of argument for counsel to develop on this subject in preparing for any future meetings. It was my thought that we should try to persuade the Department of Justice that a partial divestiture of Grinnell's Fire Protection Division should really be sufficient to satisfy the Government's

antitrust theories. We had won the Grinnell case decisively on the merits, and the Fire Protection Division was the only portion of the company involved in the proposed appeal by the Government. I felt strongly that it would be manifestly unfair and unnecessary for ITT to be required to divest all of Grinnell when there were not even any anti-competitive charges involving most of Grinnell's business operations. I understand that Mr. Bohon then prepared a final memorandum dated May 7, 1971 (Exhibit E hereto), using certain of the material in my rough draft memo of May 5, which communicated our final suggestions as to the points Mr. Rohatyn might make if the subject of a possible Grinnell divestiture should come up. Our position in this respect is set forth in greater detail in another May 7, 1971 memorandum prepared by Mr. Bohon, captioned "The Grinnell Antitrust Case" (Exhibit F hereto), which was also given to Mr. Rohatyn.

4. After Mr. Rohatyn met with Mr. Kleindienst on May 10, he reported to me that the conversation was essentially confined to a repetition of the economic and financial points made during the April 29 meeting and in the follow-up letter of May 3. Mr. Rohatyn said that he briefly mentioned that the Justice Department should not require ITT to divest any portion of Grinnell other than its Fire Protection Division since that was the only part of Grinnell which was involved in any potential antitrust problems. But, Mr. Rohatyn reported that Mr. Kleindienst made no response to this point and that there was no discussion at all of any possible settlement terms.

5. Thereafter I received no further information about the Justice Department's reaction to our economic presentation

until June 17, 1971 when, as I have previously testified before the Commission, I was told by Mr. Rohatyn of a telephone conversation he had had that morning with Messrs. McLaren and Kleindienst, in which they informed him that the Justice Department's "negotiating position" for a settlement of the three antitrust cases would permit ITT to retain Hartford but would require divestiture of four large companies - Canteen, Grinnell, Avis, Levitt - and would impose severe restriction against future domestic acquisitions and against possible reciprocity practices. As I have also testified, both Mr. Rohatyn and I were surprised and dismayed by that "negotiating position" since we considered that the price the Justice Department was suggesting for settlement was "very steep", and was one which in no event would we recommend that ITT accept (Tr. 9-12, 19). Prior to that time - as is shown in my May 5 rough draft memorandum - the maximum voluntary divestiture which I had even contemplated was divestiture of the two other companies whose acquisitions were directly challenged in the Government's lawsuits, Canteen and Grinnell. And even in that respect, as is illustrated by my May 5, 1971 rough draft memorandum, I was extremely reluctant for what I sincerely considered to be very valid reasons to agree to any complete divestiture of Grinnell. Furthermore, I should emphasize that any willingness on our part to even consider a divestiture of all of Grinnell was only in the context of an overall settlement which would require divestiture of two companies - Grinnell and Canteen. Certainly, when the Department of Justice, on June 17 and thereafter, insisted upon a divestiture of the four large companies, a total divestiture of Grinnell from my point of view was simply out of the question.

6. As the Commission is aware, Mr. McLaren disagreed for some time with our position that a complete divestiture of Grinnell should not be required as part of an overall settlement of the three antitrust cases. It was not until July 30-31, 1971, when a settlement agreement was reached, that he withdrew from this position.

Harold S. Geneen

Sworn to before me this
12th day of June, 1972

Joyce A. Edwards

JOYCE A. EDWARDS
Notary Public, State of New York
No. 30-[illegible] Nassau County
Cert. [illegible] New York County
Commission Expires March 30, 1973

negotiations. Also, with respect to Canteen, he inquired if we would be willing to let ITT keep after-acquired properties, that is, those bought or constructed after the main acquisition. With respect to Grinnell, he argued that ITT should be permitted to divest only part of Grinnell, that is, the fire protection business, which had been discussed during the trial of the case. With respect to Levitt, he raised the after-acquired property point and also inquired about retaining overseas properties. He protested that there was no good antitrust reason why ITT should be forced to divest Avis. Then he asked about the negotiatibility of our provision on no acquisitions over $10 million, and so forth. I told him we would negotiate on details, but that the basic provisions of the proposal were firm.

Within the next few days we agreed internally that Carlson and Widmar should handle the negotiations, and by June 30 Carlson and Widmar had so advised Sailer, and had had a discussion with him concerning procedure.

On July 1, I met with Sailer, Carlson and Widmar and after a very short session, principally covering the points I had discussed with Sailer on June 24, I left Carlson and Widmar with Sailer to continue the negotiations.

Negotiations between Carlson and Widmar on the one hand and Sailer on the other hand continued through the month of July—a part of which time I think from about July 10 to July 20, I was in London at the ABA meeting—and in the last few days of the month, Carlson and Widmar advised me that the matter was about wound up and that it would be helpful if I would sit in on one or two sessions to cover some final points. On July 30, I agreed that we would accept divestiture of the Fire Protection Division of Grinnell, rather than insisting on full divestiture. I did so because Messrs. Carlson and Widmar, with Mr. Hummel concurring, felt that separating the Fire Protection Division from the rest of Grinnell would be a procompetitive step, putting the rest of the industry on a more even competitive basis with Grinnell, which incidentally was the leader in that particular industry, which had had a competitive advantage by reason of its vertical integration and its broad contacts in the construction business.

There were certain other minor points still in dispute, and our meeting adjourned on the evening of July 30, which was a Friday, for Mr. Sailer to consult with his client. We reconvened our meeting on Saturday morning, July 31, and ironed out the final points. Mr. Sailer then contacted ITT—and I believe they polled the directors for final approval of the proposed settlement by telephone during the day. I then prepared a press release, for immediate distribution, announcing that we had reached an agreement in principle on the terms of consent decrees which, if approved by the courts, would terminate the three cases. This was done in order to head off any further newspaper speculation, and any possible insider trading when the markets reopened on the following Monday.

In conclusion, I want to emphasize that the decision to enter into settlement negotiations with ITT was my own personal decision; I was not pressured to reach this decision. Furthermore, the plan of settlement was devised, and the final terms were negotiated, by me with the advice of other members of the Antitrust Division, and by no one else.

That, as you may remember, is a part of your prepared statement and appears at page 16 [of the typewritten copy] of the record.

Mr. MCLAREN. Yes. I think I used the term "discuss" there in the sense of "consult with."

Perhaps, the Senator has in mind one of the memorandums we turn in which indicates that I sent the *Canteen* case up to the Attorney General when I initially recommended suit.

I have reviewed the situation there. Mr. Mitchell had listed Continental Bakery as a former client of his former firm and only indicated that it had later been acquired by ITT. I think what happened was that I sent the proposed case up, and then he telephoned me about it and said he was disqualified, and then he sent it down to Mr. Kleindienst. I think that was the extent of any talks I had with him.

Senator KENNEDY. And Senator Hart, in discussion, questions, with Mr. Kleindienst, said:

"What discussions did you have with John Mitchell with respect to any aspects of the ITT cases?"

Mr. Kleindienst said "None," and Senator Hart said: "Mr. McLaren, Judge McLaren?"

And Judge McLaren said:

"I had none, sir."

Mr. MCLAREN. I think that would be correct. There is a "buck" slip showing that the Attorney General's executive assistant simply bucked the matter down to Mr. Kleindienst.

Senator KENNEDY. Mr. Chairman, in the Department documents made a part of the record of this hearing there is, as Mr. McLaren just mentioned, the memorandum from Mr. McLaren, dated April 7, 1969, addressed to Mr. Mitchell which states as follows:

The attorneys for ITT are coming in to talk about the Canteen acquisition tomorrow morning. I expect to tell them we are recommending suit, including a prompt motion for temporary restraining order, unless the merger is abandoned.

And the second document is a memorandum dated April 7, 1969, from the executive assistant to the Attorney General, addressed to Mr. Kleindienst, which reads as follows:

This is a proposed civil antitrust complaint to prevent ITT from acquiring Canteen Corporation, a nationwide food service and vending company.

This looks like a good case under section 7 of the Clayton Act. There is a vertical aspect in that Canteen will be in a position to muscle its competitors and potential competitors out of food service and vending at the installations of ITT and its affiliated companies.

Canteen and ITT will also have the power to expand the former's business by anticompetitive reciprocity action directed at suppliers of ITT and its subsidiaries. Moreover as alleged in the complaint, the merger will tend to cause similar mergers by Canteen's competitors simply seeking protection against the effects of this one or aggressively seeking similar competitive benefits.

Dick McLaren has talked to the Attorney General—

and it says "A.G."

about this case so that he is aware of it. I don't believe he is aware that it is now "ripe." You may want to talk to him about it on the phone.

And then it continues:

As far as your signing the complaint is concerned, I dare say you can scratch out the A.G.'s typed name and then sign yours as Acting Attorney General.

And, then, at the bottom of the memorandum there is a handwritten notation: "To McLaren. O.K."

Senator KENNEDY. Was Mr. Flanigan in on LTV?

Judge MCLAREN. No; not other than if he was the one I talked to to recommend an expert. And I think I may have discussed what I intended to do there with Mr. Kleindienst from the financial standpoint.

Senator KENNEDY. Why would you discuss that with him? Is there any—I am just inquiring. I am just interested.

Judge MCLAREN. Do you understand the LTV decree? It is a very broad decree. It was a very important case at the time. LTV was in very bad trouble when we began analyzing it in those terms. I think I might have consulted with others—Paul McCracken, perhaps. I wanted to be sure I was right on this thing, that is all.

Senator KENNEDY. Sure.

Well now, to get back—are you unsure as to who recommended Mr. Ramsden? It was either Mr. Flanigan or the Treasury——

Judge MCLAREN. Either Flanigan or MacLaury, I would say. I have no specific recollection, but that is the best I can remember.

Senator KENNEDY. In any event, he was the one who took this material, as I understand it, provided by ITT and did the survey and the study and made a recommendation to you. Is that right?

Judge MCLAREN. Both Ramsden and MacLaury.

Senator KENNEDY. Took the ITT material?

Judge MCLAREN. Yes.

Senator KENNEDY. Both of them. And then they made the recommendation?

Judge MCLAREN. Right.

Senator KENNEDY. And the evaluation of the ITT material?

Judge MCLAREN. Well, they made their own evaluation, I think, as well as reviewing what ITT had furnished.

Senator KENNEDY. At any time did you talk about the ITT case with Mr. Flanigan or anyone in the White House?

Judge MCLAREN. I do not believe so.

Senator KENNEDY. So you did not have any communication with anyone in the White House in any way about the ITT case?

Judge MCLAREN. Not that I recall at this time, and I think I would recall if I had.

Senator KENNEDY. Sure. But they did the study, these two men.

Have the materials that have been provided by ITT, are they available?

Judge MCLAREN. Oh, yes; certainly.

Senator KENNEDY. They are available to the members of the committee if they want them?

Judge MCLAREN. Surely; yes.

Senator KENNEDY. Was there any memorandum kept, Mr. Kleindienst, that you know of, of the meeting that was held? Is there any record or recording kept of the meeting about who said what to whom?

Mr. KLEINDIENST. Not that I know of. If there is, Mr. McLaren has it.

Senator KENNEDY. Do you know of any?

Judge MCLAREN. I would have to check. We had a lot of people at that meeting and somebody may have taken notes or made a memorandum. I am not sure.

Senator KENNEDY. Mr. Rohatyn, did you keep any notes on that?

memorandum allegedly written by Mrs. Dita Beard. Mr. Hume asked whether the subject of that memorandum had entered into my conversations with the Justice Department. I flatly denied that anything having to do with the Sheraton commitment had ever been discussed by me with Mr. Kleindienst or any other representative of Justice.

Let me say now that I do not know Mrs. Beard and, in fact, had never heard her name before talking with Mr. Hume. Moreover, I never knew of an ITT commitment of the San Diego Convention Bureau until December 1971, when I read about it in the public press. This was 6 months after the antitrust settlement had been reached. Therefore, it was literally impossible for me to have participated in any conversation regarding the commitment.

The settlement requires, so far as I know, the largest divestment in the history of world enterprise comprising companies with sales approximating $1 billion in assets. Even apart from forced sale, I can think of no case in which a single owner voluntarily parted with values of this magnitude. As a director of the company, I considered this an extremely harsh settlement, arrived at after protracted and difficult negotiations between representatives of Justice and ITT.

If I may, sir, for the record, I would like to place the dates of my meetings with Mr. Kleindienst.

The first one took place on April 20, 1971, where I gave orally some of the policy considerations we thought relevant. Mr. Kleindienst stated that since the Attorney General had disqualified himself, the ultimate decision with respect to any litigation would necessarily be his. He said too he would make that decision based on Mr. McLaren's Antitrust Division recommendations, and told me any presentation should be made to Mr. McLaren and the Antitrust Division.

The next meeting took place on April 29.

This was followed by the meeting of May 10.

The next meeting was June 29.

The last meeting was July 15.

Thank you, Mr. Chairman.

The CHAIRMAN. Judge McLaren, you say you were solely responsible for this settlement, with your staff?

Mr. MCLAREN. I'm sorry. I couldn't hear the last sentence.

The CHAIRMAN. Did I understand you to say that you were, you and your staff were solely responsible for this settlement?

Mr. MCLAREN. That is my testimony, yes, sir.

The CHAIRMAN. Now, did you know anything about a $400,000 contribution from ITT to the city of San Diego?

Mr. MCLAREN. Absolutely not. I knew nothing about any of this whole business, or even that the convention was going there until I read about it in the newspapers where someone tried to make a connection between an alleged payment and the settlement of the case.

The CHAIRMAN. Now, did Mr. Kleindienst, Mr. Mitchell, or anyone else attempt to influence your decision in this settlement?

Mr. MCLAREN. The direct answer to your question is "No, they did not." I would like to add this: when I was first interviewed by Mr. Mitchell and Mr. Kleindienst in the Pierre Hotel in December of 1968 with regard to coming down here, I had an understanding with them

HERMAN: Let me ask you one other in-their-shoes question. Do you think it was right and proper and also wise for IT&T to make this large pledge to an organization connected with the Republican Party while it was engaged in this litigation or these negotiations?

JUDGE McLAREN: I just have no way of commenting on that. I knew nothing about it. It never came to my attention, even where the convention was going to be, until long after our negotiations. I never met Mrs. Beard, I never had anything to do with that. According to their story, as I understand it, for the big hotels to make contributions, particularly on a big opening, as I understand that Sheraton's going to have out there, that's a pretty customary thing.

HERMAN: But by five times customary. They are the second largest chain, they gave five times as much, I understand, as the first largest chain.

JUDGE McLAREN: Well, they've got three hotels - I don't -- I can't argue that -- I knew nothing about it at the time, and I guarantee you that that Republican convention site and ITT's contribution had alsolutely 100 per cent nothing to do with this settlement that I made.

STRAWSER: If, as Mrs. Beard claims, that memorandum that did link the two was a forgery all along, do you feel that it was unnecessary for you to sit through all those days of hearings in the Senate?

JUDGE McLAREN: I don't -- I -- Mr. Strawser, it's completely inexplicable to me. Based on my knowledge of the events, what I said before was that the memorandum is absolutely incredible. Now whether it's spurious, a forgery, or just name-dropping, I just don't have any

9. On July 23, 1971, the Republican National Committee selected San Diego as its selection site for the 1972 Republican National Convention. San Diego was the preferred site by William Timmons, who had investigated that city as a potential site and the Attorney General's convention task force, and was the highest regarded city for security purposes.

9A. WILLIAM TIMMONS MEMORANDUM, MAY 6, 1971

THE WHITE HOUSE

WASHINGTON

CONFIDENTIAL/EYES ONLY May 6, 1971

MEMORANDUM FOR: H. R. HALDEMAN

FROM: WILLIAM E. TIMMONS

SUBJECT: '72 Convention Site

I spent two days in San Diego this week surveying the city as a possible site for the 1972 Republican National Convention. A report on my findings is attached in Tab A.

There has been no effort in this paper to compare San Diego with other possible locations. Also, there is no evaluation given to California in relation to the possibility of Reagan or McCloskey contesting the nomination or weight given to Vice Presidential politics. Both of these factors must be considered at some point however in the decision process.

I believe San Diego would make an excellent location for the next Convention. However, there are two major obstacles and three minor problems:

TIMING: It is absolutely impossible for San Diego to host the Convention before Labor Day, September 4th. The city's hotel rooms are always committed during August by tourists and there is an unwillingness to lose regular customers. Also, the Hall is booked by the International Machinists Union September 3-17 and by the Fleet Reserves from September 17-21st. If these two organizations were willing to reschedule their conventions, even the early September date presents a legal difficulty for us. A number of states require Presidential candidates to file by late August in order to get on the November ballot. In 1968 I'm told the Democrats ran into this problem in several states but were able to get waivers. I am having two groups independently research the various state laws and possible waivers. Unless this is satisfactorily resolved, San Diego will not offer a bid. I'll keep you posted on the results of my investigation.

FINANCES: The RNC estimates it will spend $800,000 to run the convention. Bidding cities are requested to pay the Committee this amount, part of which can be in services, rents, etc. It will be impossible for San Diego to raise this kind of money. They talk of only $200,000, but if they are really in the running I feel the city can come up with

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FINANCES: (continued)

$400,000 with the remainder coming from RNC and California GOP sources. If the timing problem can be resolved, I will make the necessary contacts to work on the financial bid.

HOUSING: The lack of excess first class rooms and available parlors present a minor problem. By stretching, San Diego can commit sufficient rooms for the event, I feel.

CONVENTION HALL: The RNC requires 150,000 square feet of work space in - or adjacent to - the Convention Hall. This is mostly for media. The San Diego Sports Arena has only about 30,000 square feet of off-floor work space. Therefore, a temporary building with approximately 120,000 square feet will have to be erected. This can be done.

GOP FACTIONS: If San Diego is chosen as the convention site, we can expect a blood-letting confrontation between the Finch and Reagan forces for control or at least public exposure. The battle lines are already forming, and I suspect the situation could become bitter. NOTE: Al Harutunian apparently has tentatively reserved the Sports Arena for mid-September under the name of Billy Graham. It is widely believed he is acting as an agent for Finch. I have information that Bob will be in San Diego this week-end and may discuss the convention. While I did not see Harutunian, he has learned of my trip and will undoubtedly spread it around. I suspect Dick Capen told him, although this is just a guess.

San Diego will definitely make a formal bid for the 72 convention. I am obligated to report to them if we can consider a September event. The Site Committee of the RNC will have to visit San Diego, but Bob Dole tells me he can arrange for a favorable report on any city the President wants.

9B. GORDON STRACHAN MEMORANDUM, JUNE 23, 1971, WITH ATTACHMENT

THE WHITE HOUSE

WASHINGTON

June 23, 1971

MEMORANDUM FOR: H.R. HALDEMAN

FROM: GORDON STRACHAN G

SUBJECT: 1972 Convention Site

Magruder will meet the Attorney General today and discuss memorandum attached at Tab A concerning the RNC Site Committee's visit to San Diego.

To summarize:

1. The Site Committee found the same faults Bill Timmons' noted in his May 6 memorandum (limited office space at the convention hall and barely adequate hotel accomodations);

2. The local politicians are indifferent, but the State officials, especially Ed Reinecke, are enthusiastic.

3. The San Diego bid is $500,000 in cash and $1,000,000 in inflated price services. This excellent bid is considered primarily the work of Reinecke and Magruder will suggest that the Attorney General call Reinecke and thank him.

4. San Diego is the favored site of the Attorney General's task force, though Chicago, Miami, and Louisville are still under serious consideration by the Site Committee.

5. Dole, Timmons, and Magruder believe the Convention Site Committee's request to see the President should be denied. Rather, Timmons should see the President, get his decision, relay it to Dole, and have Dole program the Site Committee to recommend formally to the President and announce to the media the location of the 1972 RNC Convention.

No - I should

6. A formal decision paper will be presented to you and the Attorney General when San Diego submits its formal bid, hopefully this week.

On a related matter, Timmons submitted the memorandum attached at Tab B concerning the number of White House Staff who would be attending the convention. Timmons believes all commissioned personnel (approximately 50) are "entitled to be present whether or not they are actively engaged in the Convention."

The following are the options of which I recommend number two.

1. All commissioned personnel attend_____

2. Only those Staff who are contributing, whether commissioned or not_____

3. All male Staff down through Staff assistant level (150)_____

Wait a bit. To Timmons 6/20

9B. ROBERT ODLE MEMORANDUM, JUNE 22, 1971

CITIZENS FOR THE RE-ELECTION OF THE PRESIDENT

WASHINGTON

SUITE 272
1701 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D.C. 20006
(202) 333-0920

June 22, 1971

CONFIDENTIAL

MEMORANDUM FOR: MR. JEB S. MAGRUDER

FROM: ROBERT C. ODLE, JR.

SUBJECT: 1972 CONVENTION SITE

The RNC's Convention Site Committee has now returned from San Diego, thus completing its series of visits to all the cities which have bid for the 1972 Republican National Convention. The Committee was not as impressed with San Diego as we hoped it would be, citing the lack of office space for the media and the RNC at the convention hall as the main drawback. Also, some political officials in the city, chief among them the mayor, either suggested that the city did not want the convention, or were at best indifferent to the prospect of getting it. On the other hand, business leaders and state officials, led by Lieutenant Governor Ed Reineke of California, were very enthusiastic and members of the Site Committee reacted favorably to these people.

Bill Timmons reports that his contacts in California tell him the city is now offering $400,000 in cash and approximately $600,000 in services bringing the total offer to approximately $1,000,000. However, the city is putting very high pricetags on the services, so in reality the figure might be more like $800,000. The final bid is being prepared this week in San Diego and should be received by the National Committee at the end of the week -- we will obtain a copy of it. It is our understanding that in this bid, the city will offer to construct a building adjacent to the convention hall which can house offices for the media and also for the RNC. San Diego will donate the use of the convention hall for as long a time as is needed to ready it for the convention, and also for the convention sessions.

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Incidentally, San Diego Democrats are reported to be upset that the city did not bid for the Democratic convention and therefore San Diego has decided to put in a pro forma bid for the Democratic convention.

It also should be noted that the Site Committee believes the list of cities under serious contention is now down to San Diego, Miami, Louisville, and Chicago. The committee has ruled out Houston because it has not expressed a real interest in the convention and has refused to make a firm offer of cash and services. San Francisco was ruled out because the committee fears possible problems with the nearby campuses and does not feel the convention hall and hotel situation is as good as it is in other cities.

In the meeting of our convention strategy task force on Friday, San Diego emerged as the very clear favorite, followed by Houston. There was no support for any of the other cities. Those attending that meeting were Pat Buchanan, Bill Safire, Dick Moore, Harry Dent, Len Garment, Don Rumsfeld, and Bill Timmons. Dwight Chapin, Fred La Rue, and Frank Shakespeare were out of town. In addition to favoring San Diego, the task force agreed that the convention should begin the week of August 21, 1972, and should be a three day convention.

Jo Good told me today that members of the Convention Site Committee are in Washington this week and that she would like Chairman Dole, Fred Scribner, and the vice-chairman of the committee to meet with the President later this week or next week to review with him the thoughts of the Site Committee, so that the President might be informed of everyone's views before making up his mind. I have advised Bill Timmons and Gordon Strachan of this, and the three of us have agreed that the following strategy should be employed rather than having the committee see the President. Also, Timmons tells me that Dole agrees with him that we should pursue the following scenario:

As soon as the bid from San Diego comes in, we (Timmons, Magruder, Odle) will examine it. If our inclination is still to go with San Diego, I will prepare a decision paper for the Attorney General and Mr. Haldeman. Assuming their concurrence, we will then request that Timmons discuss with the President his views on all the cities in contention for the convention site and our recommendation that we go to San Diego. Assuming the President concurs with this choice, Timmons would then talk with Dole and communicate the President's decision to him. Dole would talk with the members of the Site Committee regarding this and at some future point in time (next

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week or the week after), either Dole by himself or Dole with the other members of the Site Committee would meet with the President and announce to him their decision that the convention go to San Diego. The President would tell the Site Committee that he concurs with their recommendation that the convention be held there. Members of the Site Committee could then go into the Briefing Room and announce to the media that they had recommended to the President that the convention be held in San Diego, that the President had approved their recommendation, and that they hoped the Republican National Committee would approve the recommendation in Denver on July 23. This would put us publicly on record as having chosen a convention site before the Democrats.

If the general strategy as outlined above is approved, we will proceed as suggested with the initial decision paper.

Approve _____ Disapprove _____

Comments _____

✓ bcc: Mr. Gordon C. Strachan (for Mr. Haldeman's approval and concurrence if necessary)

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9B. WILLIAM TIMMONS MEMORANDUM, JUNE 21, 1971

THE WHITE HOUSE

WASHINGTON

June 21, 1971

MEMORANDUM FOR: H. R. HALDEMAN

FROM: WILLIAM E. TIMMONS WT

SUBJECT: '72 Convention

In preparing my preliminary plan for next year's convention, I need to know how many White House staff we may be required to accommodate with rooms, transportation, tickets, etc.

No doubt a number of key staffers will be involved in the convention campaign and, of course, those will be included in our early plans.

I personally feel that all commissioned personnel are entitled to be present whether or not they are actively engaged in the convention. ~~or not~~. This would be a morale booster, give staff a greater insight into politics, and serve as "crowd fillers" for selected events.

RECOMMENDATION:

That I include plans for having all commissioned White House staff attend the '72 Convention.

APPROVE _____ DISAPPROVE _____

OPTIONS:

If the recommendation is disapproved, then

1. Only those staff who can make a contribution to the Convention _____

If the recommendation is approved, then

1. Include male staff down through staff assistant level _____

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June 26, 1971

MEMORANDUM FOR: THE ATTORNEY GENERAL
H. R. HALDEMAN

FROM: JEB MAGRUDER
WILLIAM TIMMONS B.T.

SUBJECT: 1972 Convention

This paper with its attachments is a summary of information relating to decisions that should be made immediately regarding the 1972 Republican National Convention. We make three recommendations:

1. That San Diego be selected as the site city
2. That the Convention start August 21, 1972
3. That it be a three-day Convention

We suggest you discuss these topics, at the earliest opportunity, with the President to get his guidance. When resolved, Chairman Bob Dole should be notified so he can engineer his Site Committee to make identical recommendations to the President. Later, Dole should meet with the President to advise him of the Committee's views, giving the President an opportunity to concur. Should San Diego be selected, this meeting might be considered for San Clemente the first week in July.

I. DEMOCRATS

Every available signal is that the opposition will hold its national convention in Miami Beach, starting on July 10, 1972. While Miami has good facilities, hotels and vacation atmosphere, the Democrats are probably more interested in the security aspects of Miami as a result of the '68 riots in Chicago.

II. REPUBLICANS

Bob Dole is Chairman of the Republican National Committee Site Selection Committee. The Committee membership is listed in Tab A. Bids have been received from:

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-- San Diego
-- Miami Beach
-- Chicago
-- Houston
-- Louisville
-- San Francisco

Committee visitations have been made to all cities except San Francisco. An analysis of each city's bid and some pro and con arguments of the various sites are in Tab B.

Since the President will control the Convention machinery and can schedule events to fit television prime time, media coverage is not a significant factor in site location. Presumably we will try to target time for maximum exposure, and this can be done by a little earlier program on the West Coast or a little later on the East Coast.

Also, while we question the argument that site location helps deliver a state's electoral votes to the Party, it certainly is a false issue for regular convention cities such as Chicago, Miami and San Francisco.

Facilities, security, a healthy "upbeat" atmosphere, confidence and control are important considerations to site location.

The Site Committee will make its formal recommendation to the full Republican National Committee at the Denver meeting on July 23. It is expected that the RNC will ratify the recommendation without difficulty. Additionally, Dole has indicated he recognizes that the President will call the shots on the Convention.

III. DATE OF CONVENTION

The Republican National Committee, Justice Department and White House counsel agree that a September convention would be too late to guarantee that the nominees can legally be placed on the ballots in a number of states. While some waivers may be possible, a September Convention cannot be considered. The Summer Olympics start in Munich, Germany the last week in August, and ABC has exclusive coverage and a commitment to carry events in prime time. ABC officials say that is locked in and it would be difficult for their crews and equipment to cover a convention the last week in August. Also, it is felt we would lose a substantial audience if the Convention were to compete with the Olympics. Therefore, August 21 appears to be the latest date the Convention could start considering the circumstances. The RNC favors the Convention for this period.

IV. THREE-DAY CONVENTION

Historically, both parties have held conventions varying in length from two days to five days. A four day convention has been the most popular. Because of the expected renomination of the President, a shorter Convention is felt appropriate for 1972. This would help eliminate delegate and public boredom and leave fewer opportunities for the media to emphasize Republican differences, demonstrators, etc. On the other hand, official business can hardly be condensed to fewer than three days. It is anticipated the sessions might be divided as follows:

Monday, August 21 Morning First Session	Convening Committees appointed Temporary Chairman
Monday, August 21 Evening Second Session	Keynote Address Permanent Chairman
Tuesday, August 22 Morning Third Session	Reports of Platform Rules, Credentials, etc.
Tuesday, August 22 Evening Fourth Session	Nomination Speeches and election of candidates
Wednesday, August 23 Evening Fifth Session	Acceptance Speeches

The principal change in this agenda schedule is that normally the committee reports, including Platform, are held during evening prime time on the second day. With an incumbent Administration, it is felt this event could be held in the morning even though we are exploring ways (films?) to make the platform more interesting and attractive. The RNC favors a four day convention because of anticipated hotel commitments to the host city and fear emergencies may require longer individual sessions.

We urge adoption of our recommendations.

1. San Diego as site

   APPROVE _____ DISAPPROVE _____

2. Start August 21, 1972

   APPROVE _____ DISAPPROVE _____

3. Three-Day Convention

   APPROVE _____ DISAPPROVE _____

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SAN DIEGO

AVAILABILITY:	August date is okay.
HALL:	Seats 15,000. Will require temporary facility for network and service organizations.
BID:	$1,500,000 in cash, goods & services.
HOTELS:	Can meet 18,000 requirement, some rooms better than others. Short on parlors.
SECURITY:	Good local police force and state patrol. Military installations close by. Access to hall is good.

ARGUMENTS:

PRO:
- -- Republican Governor (Reagan)
- -- Republican Congressman (Wilson)
- -- Close to Western White House
- -- Outstanding climate
- -- New, non-convention city
- -- Emphasizes GOP interest in Western votes
- -- Best money bid
- -- California has most delegates and most electoral votes
- -- Many things for delegates to do
- -- Outside, wholesome atmosphere
- -- Copley papers

CON:
- -- Democratic Mayor (up for re-election this year)
- -- City never handled big riots
- -- Shortage of parlors
- -- Construction of temporary facility next to hall
- -- Possibility of Reagan candidacy
- -- Internal competition between Reagan and Finch forces
- -- Proximity to Watts & Berkeley could assure demonstrations
- -- Arnhold Smith IRS problems
- -- Must have earlier sessions to accommodate national prime time
- -- Aerospace unemployment
- -- Considered a non-union town

CONCLUSION: By far the best of bidding cities. Security is main concern.

9C. JEB MAGRUDER AND WILLIAM TIMMONS MEMORANDUM, JUNE 26, 1971

MIAMI BEACH

AVAILABILITY: August date is okay

HALL: Seats 16,000. Excellent hall.

BID: In neighborhood of $600,000 in cash, goods and services.

HOTELS: Good rooms and parlors in sufficient numbers. However, they are stretched out with only one artery.

SECURITY: Excellent because of geography.

ARGUMENTS:

PRO:
-- Close to Key Biscayne
-- Sentimental return to '68 site
-- Lot for delegates to do; beaches
-- Best security of all cities
-- Easier for media to cover both conventions

CON:
-- Hurricane season
-- Old hat; nothing new
-- Public boredom of having two conventions in same city
-- Democratic Governor and Mayor
-- Afraid of riots; seek shelter
-- Not truly a "southern" city
-- Local Cuban competition
-- Have had racial problems
-- Must have later sessions to accommodate national prime time

CONCLUSION: Second best choice

9C. JEB MAGRUDER AND WILLIAM TIMMONS MEMORANDUM, JUNE 26, 1971

CHICAGO

AVAILABILITY: August date would require moving American Legion convention. This may be possible.

HALL: 12,000 seats -- a little small. In black ghetto section.

BID: The required $800,000 anyway we want it.

HOTELS: Excellent number of rooms and parlors.

SECURITY: Police good and have riot experience.

ARGUMENTS:

PRO:
- -- Republican Governor (Ogilvie)
- -- Midwest location
- -- Transportation center
- -- GOP can do what Democrats couldn't.
- -- Good prime time coverage for nation
- -- Big City atmosphere

CON:
- -- Red flag to demonstrators
- -- In Daley's hands
- -- Have been there before
- -- Governor Ogilvie is opposed
- -- Chicago is not truly representative of Heartland America
- -- Not much new for delegates
- -- Racial and unemployment problems
- -- Hot, humid climate

CONCLUSION: The risk is too great for any marginal benefit.

HOUSTON

AVAILABILITY: Possible in August subject to rescheduling of baseball games.

HALL: Astrodome is too large but Astrohall has 15,000 seats. Modern facilities.

BID: No firm offer made.

HOTELS: Limited. Must utilize rooms far away from hall.

SECURITY: Probably adequate.

ARGUMENTS:

PRO:
- -- A new convention site
- -- Will influence Texas and southern votes
- -- Republican Senator (Tower) and one local Congressman (Archer).
- -- Midwest television time
- -- Central geographical location
- -- Few demonstration problems

CON:
- -- Democratic Governor
- -- LBJ image covers Texas
- -- Hot and humid climate
- -- Not much for delegates to do
- -- It was apparent to the Site Committee that Houston was not genuinely interested in attracting the convention and refused to cooperate. If Houston is chosen, it will require a great deal of RNC staff work to get a decent bid.

CONCLUSION: "Dark Horse" third choice but harder negotiations required.

9C. JEB MAGRUDER AND WILLIAM TIMMONS MEMORANDUM, JUNE 26, 1971.

LOUISVILLE

AVAILABILITY: Anytime we want it.

HALL: New, excellent downtown facility.

BID: Open to negotiation; no firm offer.

HOTELS: Extremely limited; probably have to house in other states.

SECURITY: Probably adequate but untested.

ARGUMENTS:

PRO:
-- New convention city
-- Helps with southern and border states votes
-- Republican Governor (election this year) and two Senators (Cook & Cooper)
-- Small town heartland America
-- Kentucky bourbon

CON:
-- Housing and transportation limited
-- "Why Louisville?"
-- Nothing for delegates
-- The Site Committee feels Louisville is not sincere in its bid, which was instigated by Col. Sanders of chicken fame and a group of aggressive Jaycees who are part of the Democratic Mayors best supporters.

CONCLUSION: Not enough pluses to offset liabilities.

SAN FRANCISCO

AVAILABILITY:	Undetermined
HALL:	Cow Palace seats 14,000 but is far from city
BID:	No offer made. Felt could raise $300,000.
HOTELS:	Tourist season. Hard to commit.
SECURITY:	Not Good. Center of dissent and unrest.
ARGUMENTS:	No body considers San Francisco a possibility in light of above and other factors.
CONCLUSION:	Absolutely out of question!

UNITED STATES DEPARTMENT OF JUSTICE
LAW ENFORCEMENT ASSISTANCE ADMINISTRATION
WASHINGTON, D.C. 20530

OFFICE OF THE ADMINISTRATION

June 30, 1971

MEMORANDUM FOR: Mr. William Timmons
Office of Congressional Liaison

SUBJECT: Security and Civil Disorder Capability of the Six Cities Bidding for the Republican National Convention

After a review of the security and civil disorder capability of the six cities which have submitted bids for the holding of the Republic National Convention, we herewith submit our conclusions. A detailed breakdown of the capability of each city in those areas which we consider most important is attached. The cities were evaluated on the basis of these criteria. The six cities, together with our summary observations, are listed in order of preference as follows:

1. San Diego, California

Command and control elements of the city for civil disorders is considered excellent. Recent incidents in the nature of civil disorders indicate that the police department is well organized and well deployed. Arrangements exist for curfews and the imposition of restrictions such as the closing of bars and gasoline stations. The city has developed excellent mass arrest procedures. San Diego has approximately 950 uniformed sworn personnel and approximately 260 reserves. The city has achieved an excellent level of training in riot control and has engaged in some joint command post exercises for civil disturbances. The police department has two SEADOC attendees. Their intelligence system is excellent.

2

The city has a very small EOC, but is capable of expansion with considerable reorganization. It has no mobile command posts. The existing master civil disorder plan is considered excellent and is tested each year. They have excellent special organizational arrangements for large scale security and large scale civil disorders situations. They have sniper suppression teams, but only limited capability in explosive clearance and arson suppression. The city relies on the active military service for ordinance disposal.

Mobile booking teams are available and mass arrests procedures have been developed. They have special protective equipment such as flack vests and face shields but would need supplemental equipment in the case of a large civil disturbance. A limited communications ability exists.

Mutual aid arrangements are in existence with local cities (approximately 500); regional areas (approximately 2,000); and state police (approximately 2,500). On street national guard strength can be anticipated at 15,000. The state of training of these forces can be considered good at the county and regional level, and excellent at the state level.

There is excellent ingress and egress to the municipal convention center which is located in the center of town and across the street from the county jail. The San Diego Sports Arena is located approximately five miles west of the city in a semi-industrial area. There are no parks or other open areas in the immediate vicinity. Heliport facility could be arranged. Adequate parking facilities do exist.

Relationship between the judiciary and the police is excellent.

2. Chicago, Illinois

This city has a good police command and control element which has operated successfully in the past. The number of uniformed police is adequate for most anticipated situations. They are well trained in CD operations. Their intelligence system is excellent.

The city has an expandable well-equipped EOC. They have a present capability in the area of Special Operations to include ordinance disposal, sniper and arson suppression, mobile booking, mass arrest and detention. Police force is well equipped with protective gear and chemicals. Good communications equipment is available with trained operators.

The major facilities afford adequate ingress and egress. Heliport facilities can be arranged in the immediate location, and adequate security can be provided.

Excellent relations exist between police and judiciary.

Police superintendent is not a political activist.

3. Houston, Texas

There are established policies and procedures for the control of civil disorders in Houston. The city has approximately 1,800 uniformed sworn police officers. They are considered to have an operational capability in controlling riots.

4

They have an excellent master civil disorder plan. Existing mutual aid arrangements with surrounding counties can provide 50 sheriffs and 500 reserves as well as a state highway patrol of 700 equipped officers and approximately 11,000 on street national guard forces.

The top leadership of the police department is considered to be excellent.

4. Miami Beach, Florida

Command and control element of the Miami Beach Police Department is considered to be good. The police department has performed in minor civil disturbances in an adequate manner. They have made local curfew arrangements and have a capability for mass arrests. The number of uniformed sworn policemen is 231. All members of the police department have had some special riot control training, but none have attended SEADOC.

The city has an excellent master riot control plan and an excellent working relationship with the fire services and public utilities. They have a capability for special operations in the area or ordinance disposal, sniper suppression teams, and mobile booking teams. They have a regional mutual aid arrangement providing 60 sheriffs, 285 policemen. The highway patrol augmentation capability is 872 uniformed personnel. The National Guard could provide an on street strength of 4,800. The police have a good working relationship with the judicial establishment. The competence of the top leadership of the department is considered good.

5. Louisville, Kentucky

This city has good command and control for civil disorders. There are 563 uniformed sworn policemen. The general status of riot control training among uniformed personnel is considered good. However, none of the police department has had any SEADOC training. Louisville has an excellent master riot control and civil disorder plan. The police have an explosive ordinance disposal team and sniper suppression teams as well as a mobile booking team. The force is equipped with protective helmets and gas masks and has some chemical ordinance.

There are 638 state police available to the city in an emergency and an on street national guard capability of 3,000 men. The police have a good relationship with the judicial establishment, and the top leadership of the police department is considered good.

6. San Francisco, California

The command and control element for civil disorders in this city is considered to be excellent. Recent experiences in civil disorders in San Francisco over the past few months show that the police department is well organized and well prepared. There are curfew arrangements and authority to impose restrictions such as the closing of liquor stores and gasoline stations. City has provided for mass arrests. The number of uniformed police personnel is 1,761 with a reserve force of 240. The status of riot control training for the uniform police officers is considered to be excellent. They have had two SEADOC attendees. The city is

considered to have a good intelligence gathering network.

San Francisco has an adequate emergency operation center and several mobile field command posts. EOC is capable of expansion. Police department has sniper suppression teams with limited capability in the area of arson suppression and explosive clearance. Mobile booking teams are available. The police have special protective equipment and some chemical ordinance. Police department has a very limited communications capability. Mutual aid arrangements are in effect with local cities, counties, and regional areas and the state police. They are capable of supplementing the police force by 1,500 (local cities); 500 counties; 1,000 (regional area); and 1,500 (state). The national guard has the capability of putting 15,000 men on the street. The police department has responded well in recent civil disorders.

The relationship between the police and the judicial establishment is excellent.

The command structure of this police department has been subject of criticism in recent years, because it is not considered to be responsive to the Chief of Police. The Chief was appointed approximately one year ago by Mayor Allioto, replacing the past Chief, T. Cahill, due to Cahill allegedly being too law and order oriented and conflicts arising between the Chief and the Mayor.

Jerris Leonard
Concur--Administrator

Clarence M. Coster
Associate Administrator

9D. ARNOLD WEBER MEMORANDUM, MARCH 4, 1971

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503
March 4, 1971

MEMORANDUM FOR JOHN D. EHRLICHMAN

Subject: Security Preparations for the 1972 Convention

As you know, the 1968 Democratic convention was the scene of considerable controversy and violence, giving rise to security problems of major proportions. The Republican convention in Miami Beach was relatively free of such disturbances, but the fact that the Republicans now constitute the party in power in addition to the involvement of the President increases the importance of security at the 1972 convention site.

Early planning in regard to the Federal role is already underway in the Secret Service. However, a comprehensive effort involving coordinated Federal and local enforcement efforts cannot be mounted until the site is known. If the convention site is identified at an early date, the local law enforcement agencies can start the necessary preparations, and their efforts can be supplemented by possible funding through an LEAA grant. Law enforcement officials from potential convention sites have already visited LEAA requesting consideration of supplemental grants. However, both LEAA and OMB agree that such a step cannot be considered until the particular site is selected.

Taking into account security alone, it is desirable to have the site selected as early as possible. I recognize that other considerations are relevant and may be determinant, but I thought that it would be desirable to bring this matter to your attention early in the game.

/s/ A.R.W.
Arnold R. Weber
Associate Director

10. In response to a question at the Senate Select Committee, concerning Dita Beard's disappearance on the eve of the Kleindienst hearings, E. Howard Hunt stated that he was not aware of any role Gordon Liddy played in Mrs. Dita Beard's departure from Washington.

Third, when the attaché case of Mr. McCord was opened for my view at the time of discovery, I noticed that the group of surgical gloves, which I had last seen in the attaché case when it was in my safe at the White House. that those gloves were missing from the attaché case and were not otherwise enumerated in the inventory subsequently provided by the FBI.

And, of course, there may have been many other things. I did not maintain an index of the contents of my safe.

Senator INOUYE. And my final question, Mr. Hunt: In response to one of my questions, you said that you went to Denver, Colo., somewhere to meet with Mrs. Dita Beard to determine, first, her reasons for leaving Washington. Weren't you aware at that time that Mr. G. Gordon Liddy had escorted Mrs. Dita Beard out of Washington?

Mr. HUNT. I was not aware then, and I am not to this day aware that such took place, Senator.

Senator INOUYE. Did Mrs. Beard tell you how she got out of Washington?

Mr. HUNT. She did not.

Senator INOUYE. Did she tell you why she left Washington?

Mr. HUNT. She alluded to it in response to my question.

Senator INOUYE. What was her response, sir?

Mr. HUNT. She said in effect, and again let me stress that she seemed to be under sedation and was from time to time in need of oxygen, she put it that there was nobody she could trust, that she felt the only thing she could do was to run away from what she interpreted to be a hostile environment. I don't know if any memorandum stated it in those terms.

Mr. Lenzner, do you have a copy of that memo?

Mr. LENZNER. Of the memo on Dita Beard?

Mr. HUNT. My eight-page memo. Did I see you referring to it?

Mr. LENZNER. No; this isn't it. If you are referring to the memo on Dita Beard, we have made a request to Mr. Cox's office for that. We have not received it.

Mr. HUNT. Again I hate to go into details of an incident that took place a long time ago when there is hard evidence, a document that I myself wrote just hours after I returned from Denver.

Senator INOUYE. In questioning Mrs. Beard, you indicated that you met with her from 11 o'clock to about 3:30 in the morning.

Mr. HUNT. A rough estimate, sir.

Sentor INOUYE. How did you convince the doctor that it was important for you to meet Mrs. Beard?

Mr. HUNT. I believe those representations had been made before I embarked on my trip by her daughter.

Senator INOUYE. Thank you very much, sir.

Thank you, Mr. Chairman.

Senator ERVIN. Senator Baker.

Senator BAKER. Mr. Chairman, thank you very much.

Mr. Hunt and Mr. Chairman, I apologize for being absent during much of the afternoon but as I indicated to the chairman earlier, the

11. On June 22, 1974, The New York Times, page 15, carried a story in which Rep. Bob Wilson (R-Calif.) said the Special Prosecutor informed him that no legal action was being considered against him in relation to the ITT matter.

NEW YORK TIMES, June 22, 1974

Bob Wilson Says Jaworski Plans No Move Against Him

SAN DIEGO, Calif., June 20 (AP)—The Watergate special prosecutor, Leon Jaworski, has assured Representative Bob Wilson, Republican of California, that "no grand jury or court action" is being considered against him in the I.T.T. investigation, Mr. Wilson said Thursday.

He said that he had asked for the advisory because "stories were spread that I was going to be indicted."

Mr. Wilson helped to raise financial support for the 1972 Republican National Convention, which was first set for San Diego and then moved to Miami Beach. He obtained a pledge of aid from Harold Geneen, the president of the International Telephone and Telegraph Corporation.

The case involves an investigation to determine whether John N. Mitchell knew, when he was Attorney General about the I.T.T. pledge before entering into an antitrust settlement with the conglomerate.

12. On April 4, 1972, the President met with H. R. Haldeman and Attorney General Mitchell in the Oval Office from 4:13 p.m. to 4:50 p.m. during which time the ITT matter was mentioned.

12A. WHITE HOUSE TRANSCRIPT, APRIL 4, 1972, 4:13 - 4:50 P.M. MEETING

The President/Attorney General Mitchell
and H.R. Haldeman
Oval Office
April 4, 1972 - 4:13 - 4:50 PM
(Expletives Deleted)

P Well John, I hope you had some time off -- that they didn't bother you to death with ITT and all that

M No. It was simply wonderful.

P Good (unintelligible).

M We always enjoy it, Mr. President. Oh, Bebe turned that thing up according to your formula and

H (Laughter).

M I tell you, it was just great.

P I told these people around here, I said (unintelligible) call Mitchell, I said don't you Bob, and.

Of course, I suppose they had to (unintelligible) one or two.

M Well some of them did.

H We didn't bother you too much?

M No, not you fellows.

P I said in the campaign -- I said to hell with the damn campaign. Did you do any golfing? No?

M Hell, I didn't even care to.

P Did you fish?

M We fished, and we went out in the boat with Bebe a couple of times and had dinner with him two or three times.

P I'd like a little consomme. Want some consomme?

M I'd love some. So it was just absolutely great. We had some of the people down from the Committee where we could spend a couple of days, you know, with quiet and so

P Yeah (unintelligible) sort of busy these days. Try and get the weather, damn it, if any of you know any prayers, say them (unintelligible) weather. Let's get that weather cleared up. The bastards have never been bombed like they're going to be bombed this time, but you've got to have weather.

M Is the weather still bad?

P Huh! It isn't bad. The Air Force isn't worth a I mean, they won't fly. Oh, they fly, but they won't -- you see our Air Force is not . . .

H It's the strangest thing -- in World War II they flew those bombing runs all the time and they couldn't see a thing.

P I know.

M But they were doing a different type of bombing then.

P Strategic bombing and all that -- nevertheless it's a miserable business.

M Are the Navy pilots as bad?

P Oh they're better, but they're all under this one command. It's all screwed up. We just aren't going to talk about it. The weather will clear up. It's bound to. When they do, they'll hit something -- and, they're a lot of brave guys -- you've got to say. After all that POW (unintelligible) that poor who got shot down. They're over there starving on that damned rice. It's all right, we'll give 'em hell. Well the ah, what are your reflections on the present thing. Why don't we start with what I told the staff to get the hell off of the ITT and then get on to politics which is more interesting, not that that isn't --

M But that's politics -- pure and simple politics, but hopefully we'll get this thing.

P Well, I don't know if we'll ever get out of it -- I mean -- I think what we have to face is that it will be investigated by (unintelligible) election as you get closer to the election of course it's extremely, I think that -- I think you might adopt the practice -- I think you might consider adopting the practice that after the Democratic Convention the Republicans will boycott all investigating committees on the grounds that they are politically motivated. How would that be?

M I would think I would go beyond investigative committees. I'd go to some of the others where you have a facade.

P Harassing.

M Of substance, but

H (Unintelligible). It's a good idea.

P Yeah -- we're going to boycott anything that we think is politically motivated.

H These people are disgracing (unintelligible).

P And ah, Republicans just walk off and say it's just politically motivated. Well, at least ITT got 'em confused.

M I would say it's quite confusing. Some of the more enlightened newspaper people are beginning to write to the effect that the Democrats got to come up with something more than they've come up with or the monkey's going to be on their back.

H Manolo, who do you think (unintelligible).

MS I don't think so, sir.

M Not much Manolo.

MS What they do is (unintelligible).

M You happen to be right, Manolo. I was just telling --

(Material unrelated to Presidential actions deleted)

M You know this little girl -- this Lichtman -- the secretary? You know where she had her press conference don't you -- did you notice that? Down in the law office of the Democrat Chairman for the District --

P She's a Democrat?

M Yeah, but the press conference was held in the law office of this (unintelligible) District. Democrat Chairman, and yet there wasn't anything in the newspapers about it or why it just so happened.

HorP (Unintelligible).

M Most of the "shakers" are, that's for sure.

P What is your view about the convention -- about all the scares and cries I hear about the 250,000 naked kids that are going to be coming?

M Well, Bob and I have just gone over this and I've had a meeting this morning with

P Kleindienst told us about it.

M And so forth, ah, it seems to me there are three factors -- number one was screaming kids -- if you call them kids; number two -- the ITT Sheraton business with the television on the hotel all through the Convention; and thirdly, and equally, if not more important, is the fact that the site selection committee and the people that went out there to look at that thing did a God damned poor job. Its come to the point where it's going to cost between 2.4 and 2.5 million to put that thing together. In addition to that, there's

H That's if we just get the convention hall apparently?

M No, no, this is the whole thing, this is the whole thing.

H I see, all the hotels and stuff involved.

M Yeah everything; in addition to that there has to be nine hundred odd thousand dollars of insulation in that arena out there, and in addition to that there's a

P Who, (unintelligible) this, Wilson (unintelligible).

M No, I think a lot of our people closer to us than that were at fault in not recognizing the limitations of these facilities.

P All right.

M In addition to that you have your building trades labor contract coming up on June 1, out there for negotiations, and they can put the pressure on your pay board or the rest of it. So, in view of that we have thought of the potential of changing the site. We can get out of there --

P What ground would you use for changing it?

M The cost and the uncertainty of the availability of the facilities.

H There's a real question as to whether they can do the construction on --

M That's correct, and the arena out there is owned by two Canadians, and they're just acting tougher than hell.

P All Canadians are tough.

M And, there's no contract with them that covers some of these things; -- ah, so that you're not walking away from the City of San Diego, you're walking away

H You can make a very good case.

P How about San Diegians -- how do they feel?

M I don't know, frankly, I believe it would be mixed emotions.

H It's mixed, but with all the talk of the demonstrators

P Lot of people don't want them there

H I think a lot of San Diegians would be very happy to have them go away.

M I would think that that would be the case.

(Overlapping conversation)

H Hotels anyway --

P (Unintelligible) you build the fact that the arena is in trouble, in other words, you've got to find the cause. This subject came up before, you know, you raised it, Bob, and said, well, our people are so stupid on public relations that I'm sure the way it would come out is we went because we didn't want to stay at the Sheraton where somebody I understand agreed I was to stay.

H No.

P I'm not even going to stay any place in San Diego -- I'm staying in San Clemente, but be that as it may that was apparently some story that they had. Well anyway, whatever it was, the question is whether or not at this point we could start the talk. It's awful hot incidentally, terribly hot.

H I can see that

M Well, we've started this

P Put it on the basis that the arena can't be finished. Can we do that?

M Yes, as a matter of fact, I was going to say we're starting this, programming this, by sending people out to continue, and I say continue the negotiations with these Canadians because they don't want to give us a place for lead time in order to get in there to do the improvements, etc., etc.

H Then we could start the cost thing and then (Overlapping conversation).

P I'd just say that the arena would not be finished.

M Well, the cost factor goes in with the negotiations because if you don't get into the arena to do the reconstruction by a certain date your cost factors multiply and multiply and multiply -- so you just (unintelligible) the same factor. In the meantime, I talked to Bebe this morning and a Miami Beach of course is the logical place.

P Sure.

H (Unintelligible).

P Well, if it's all set up -- safe -- television -- that's the major consideration. At least it's all there. Go to the stupid damned place again, and I got a place to stay this time I wouldn't have to stay in a hotel.

M So Bebe has got this fellow Myers.

P Hank Myers.

M Hank Myers, who has the contacts and so forth, quietly canvassing to see if the arena and the hotel rooms will be available.

H This time of year?

M Oh hell, they run a lot of conventions.

P They run a lot of conventions but they'll clear them out by that time. It isn't really, I've been there in June and August -- we all have -- and they do run conventions, but generally speaking, it's still more open in the summer and the rates are lower.

M Of course

H It's still ridiculous though.

M So, if the only negative factors that I see in the change

P Is the admission of guilt in ITT, right?

M Well, I think that that will go by the boards.

P Maybe that's better than just having the damned story rehashed again.

M I would rather have the -- if they can sell it as an admission of guilt now than I would have the television cameras on the Sheraton Hotel all through the Convention.

P That's right. That's right.

M I don't know

P My theory is - It's the old story you know that a good poker player -- cut your losses -- get out of the bad box and get out of it fast.

M I don't know how our friend the Governor would take this. He might be damned glad to get the problems out of the way. I don't know, but we would do --

P Can't we -- could we have a situation where we have a break with the Canadians. You see what I mean? Create a conflict with them.

M That's what we're

P And then go out and announce it, but it's got -- if for once we could do the PR right -- if for once -- just one single solitary time -- and keep it out of Bob Wilson's hands -- and do it right -- but the problem is that the convention (unintelligible) that is the arena won't be ready, the cost is too great, or . . .

M That's the way we would program it.

P Think it would work?

H Sure. I think it would. You're bound to get some bumps on the other side? So what? You got a base a story -- just stick with it -- couldn't get the arena done -- made a mistake in surveying it. It's all fallen apart.

P You've got to establish that immediately though. This is April, and the Convention is only five months away, and so everybody is going, as you know, now that's going to be ready --

M You see these negotiations are going on and what we were proposing to do is to send a big architect and a builder or somebody else up to have a confrontation with the Canadians in Vancouver.

P Well let's do it.

M Well, we want to make sure we can go to Florida before we break this pick.

H I'd just soon not have a convention, but we can't get away with it.

M Have an absentee ballot -- that's what I'd prefer.

H The Ripon Society is suing us for improper selection of delegates or something.

P (Unintelligible).

H We have something where you state that (unintelligible) to the President gets eight additional delegates or something and the Ripon people have gone to court and some judge has upheld them on the first round.

P Is that right? Well that's been done -- been done from the beginning -- I don't know whether it means anything.

H I don't think it does. They don't seem to worry about that anymore.

M The fact of the matter is that there are a few rules that a political party has control of it's Convention and in the past they have ignored even the state laws that require people to be pledged for so many ballots and so forth. They've just ignored them.

P Let me ask you this. Do you think the possibilities of major demonstrations are less in Florida? It doesn't make a hell of a lot of difference anyway. I'd rather have a demonstration in Florida than I would in California anyway. California is a state we have to go for for other reasons.

H Well, I think they are infinitely less.

M Infinitely less.

H You've got much better physical (unintelligible).

M And in addition to that you have all the Democrats in control in Florida from the Governor on down -- where in California you have all the Republicans in control.

H (Unintelligible) have demonstrations (unintelligible).

P One story John, whenever you're asked about a (unintelligible). You know, I'm the only one in the whole outfit that didn't want to go to California. I was against it all the time.

M You wanted to go to Chicago. I didn't want you to.

P I did. That's right, but I (unintelligible).

M No question about it.

P How about Chicago now?

M Daley wouldn't let you in there, I bet.

P Oh

H Can't start from scratch from anyway now, I don't think. You've got

M Be very very difficult.

H It would.

M And we have a month between the Conventions -- more than a month in which

H Clean things up

M To change things enough to make it look like -- assuming that (unintelligible)

P (Unintelligible) platform in.

M The facilities for crowd control are so much better in Miami Beach there.

H And of course the cost is

M And we save money LEAA money, we don't have to

H Save police money.

P The other point is the Democrats really fouled up, and the police and the rest will feel that they have a responsibility to be a little bit more restrained when we're there. Well, I hope you can do it. My idea is -- I'd wait. Obviously we have to get ready -- when it's ready -- I'd say in about 30 days from now.

M I think we could move in on it before then

H Faster

M Because we're at the point where

P (Unintelligible) no way you could do it though without being charged because of ITT

M Well Herman came out with a statement today which shows that ITT's contribution is down to $25,000. I just think that the cost of it, the labor problem, the possibility that you'll never get that place in shape

P Yeah

M Ah, added on top --

P Also, we don't -- there's very little that we could do to screw up Florida as a state that we might win. California is a toss up anyway you figure it. It's a to carry and there's a nasty incident that could hurt us.

M Yep.

P That's the point. On the other hand, I don't think Reagan's attitude is supportive. He wants to carry the state. On the other hand, you got to figure whether or not -- these clowns that want to go there say -- oh it would help so much -- and all that business.

H (Unintelligible).

M Well -- you've a double edged sword there -- if everything went off nice and peaceful and you had all those 10,000 college kids we were going to have out there marching with their banners and everything was beautiful -- that'd be great.

P Yeah.

M But if you have one of these confrontations with a Republican Governor and a Republican Mayor and Pete Pitchess is sending in his storm-troopers -- why

P Yep.

M Well that's where the police are going to come from, you know they don't have enough in San Diego to handle it.

P (Unintelligible) send Pete Pitchess down - Sheriff's posse. Those old farts riding their horses. Well, I like it, but I would say that if you just start getting the word out awful fast about the (unintelligible) problem you are having with the Canadians. Is that being done, I haven't seen anything?

M Well, it's all local out there. It's known locally.

P The main point is to get it out nationally. Well.

H Local too.

P Who would say that? -- the Mayor would say it or the Convention Committee -- that we regret that we cannot handle it -- that we cannot have the hall ready.

M Well this is the Republican Convention and they wouldn't be saying it because they would, of course, have to bring that site selection committee back and they'd have to put out another call and things like that; so it would be the Republican National Committee that's the party of interest.

P Ok. -- Well leaving that subject -- what else is -- I guess today is Wisconsin isn't it?

M It certainly is -- ought to be an interesting go -- ah -- I told those fellows over there tonight with Dale and -- Dole and so forth -- to get out two thoughts in connection with this primary in Wisconsin. Number one, that there was a clear indication because of the proliferation that the Democrats did not have a viable national candidate when you look at who won in New Hampshire and who won in Florida and who won here and the next place and secondly, if there was any winner at all it was Teddy Kennedy. Now Teddy's been getting a free ride, but not being drawn into this, and if you have Dole, Dale and whoever else bring this up that --

P Why wouldn't you say that Teddy is going to be the nominee.

M Yeah, Teddy's getting

P Rather than he's a winner -- I'd simply say that McGovern's a stomping horse for Kennedy and Lucey is the Kennedy man and it looks like Kennedy is going to be the winner of the nomination. Looks like Kennedy. None of the others have got the horses to win it. Smoke him out a little.

M That's right and then, what I would hope would come out of it -- is what the Republican National Chairman and so forth are saying

M is that the reporters will be going to these other candidates and say "what do you think about what they are saying about Kennedy" and let's get them posturing themselves against Kennedy so that he doesn't get this free ride.

P It's clear, it's clear that this is a -- Mel Laird is saying that the reason Muskie has been really poleaxed there among other is that Lucey and the Kennedy Democrats have ganged up on him. They got behind McGovern, not for the purposes of supporting McGovern, but to kick the hell out of

M Muskie

P Muskie, and also, he said they did it for another reason: they didn't figure Hubert had a chance before Florida and didn't have time to change their course until then or they'd all been for Hubert, but then anybody but Kennedy. Their purpose was to stop Muskie. But they've done that -- now Hubert, of course, has come in.

H They can't stop Hubert! (Laughter)

P They can't stop him if he wins this time.

P I think he will. I think he'd be first -- McGovern second -- and if Wallace is third, I think Muskie then would be fourth, but that's just a guess.

M I don't know how the

P Maybe Muskie will be -- Muskie will be second.

M Well, I doubt that very much.

P He's up there though. He had a big telethon push which I (unintelligible).

M I don't think Muskie is going to have that drawing power up there.

P You know the thing that occurred to me is that -- it seems to me that as you look around the states -- the big states -- New York is one that I don't think you could (unintelligible) -- you really have to be personally in charge out there, and anybody else I let in there, you know what I mean, because you've to play the game and Rockefeller's got to carry it for us hasn't he? Have to get off his ass, but you've got to play the game with those conservatives, right? And so there the problem.

H Incidentally, did you see Bill Buckley's -- you see that letter he sent out?

P No. What's he done now?

H He sent out a letter to the -- I don't know whether it's a circulation building letter or something to the publication people or whatever it is - but anyway, the whole pitch is -- "I've been asked about this coming election or something, and I will say proudly I will vote for Richard Nixon for President. I consider

H any one of the Democratic possibilities would be a disaster for this country." He said that "Nixon will be a problem too

M or P (Unintelligible)

H but that he has the job" -- no, he insists that "he has the job now of doing just what the conservatives want of pulling together a sufficiently broad coalition in order to be elected to govern." He said "I would not vote for Nixon as editor of a convservative journal."

P That's very good.

H And he said "I don't feel that we should abandon our principles but when we get to the election we must vote (unintelligible).

P Then he sort of sticks it to Ashbrook?

M Well, Bill's written

H He said he was going to do that

M A couple of column's you know that go in this

P How does he, well how does he deal with Ashbrook. I mean does he want him to get a good vote anyway?

H Yeah, because that's forcing you

M That's the signal

H To take a conservative position.

P I mean I watched Ashbrook closely

H You watch Ashbrook closely and get your guidance from (unintelligible)

P What I was going to say is -- in Pennsylvania, who do we have there that you would say -- you also will handle New Jersey won't you? I don't think (unintelligible) or were you using Sears or others

M Yeah, Sears.

P What about the list of the big states? We got New York and New Jersey. What would you say about Pennsylvania? (Unintelligible). Or do you just divide the state up?

M Oh, do you mean who do we have in Pennsylvania?

P The boss, I mean it's a (unintelligible). Who would you consider to be the top man?

M That's really divided into regions but Arlen Specter is -- well

P Specter is our general

M Well he's our campaign director. Scott and Schweiker are the co-chairmen, and Arlen --

P Specter is the statewide chairman?

M Yes.

P Good.

M Well he's really going to work.

P Well he's good.

M And a

P And he wants to be governor doesn't he?

M That's correct.

P Whether he wants to be (unintelligible), he's good don't you think with the Jews and with the Blacks and (unintelligible)? Also he's with us.

M Yes, and also he's -- we're deciding whether Rizzo's campaign manager should go to work for Arlen Specter now or wait and a

P How's his relationship with the Pittsburgh crowd, all right?

M They're good, because we've got other lines

P But Specter -- that's the guy -- in other words you wouldn't be in direct -- you wouldn't need anybody here to watch (unintelligible)?

M We're going to have to have people to do that, but what I've done

P (Unintelligible) you ought to handle that

M Well let me.

P On a real tough job, I would not let them out of your hands. I don't know whether you can do them all but

M No, I've already decided that in California, Illinois, Ohio, Pennsylvania, New York and New Jersey, that I am going to have a direct line through to the people. The other states we will have these surrogates

P Surrogates.

M Regional people. Now, what I want is what we've talked about before, it's -- well, use the example of California: If we can get Cap Weinberger, if he's not so far "Hatched" that he can't do it, Cap could be a state desk man or auditor, or whatever you want to call it, somebody with the expertise of politics in California -- can go in and see what's going on up in the Valley under Monagan or what Packard is doing and his people and San Francisco, or what they're doing here there and the next place. I expect to have somebody like that for each of these big states. But I think

P I'm afraid he is "Hatched," but a

M Is he?

P (Unintelligible)

M Cap is a pretty bright able guy and he's been immersed in politics out there as state chairman

P Wonder if we should pull him out of the Budget?

M He gets along with everybody.

H Well, he doesn't want to stay in the Budget.

P I know he doesn't want to stay there. Can we pull him out and put him in an agency. He might be just as good a man as you could find around California.

M Can he take a leave?

H Just resign.

P Let Carlucci or somebody else be Budget Director if he resigns, and

H After you get a Budget Director.

P I'd have him as full time. George could find somebody

H You've George on top of it.

P George Shultz can run the Budget, (unintelligible). I really think the thing for Cap -- so important that you want him (unintelligible). Illinois?

M Well, we've got, of course, Tom Houser is a good operator and I haven't got anybody yet.

P Pretty good, yeah

M Tom Houser.

P He's Percy's man, you know.

M No.

P No, I meant he was.

M He was.

P I mean his

M He broke with Percy you know when Percy went back on his commitment to vote for you -- or to me to vote for you at the Convention.

P Well he helps us in the area we needed him (unintelligible) and so forth, and Texas?

M And we have

P How does Texas stand?

M We have Al -- we have John Connally.

P (Unintelligible).

M We have Al Topper (phonetically) downstate.

P Oh, good.

M Who is, you know

P (Unintelligible).

M And so -- plus a lot of good regional people -- even a top flight guy in the city of Chicago which is a real good politician. In Texas, I've been talking to John Connally about it.

P Have you? Good.

M John's feeling is that by the time they get to the Democratic Convention he is not even sure that Bentsen or the Lt. Governor

P Barnes

M Ben Barnes or these people should even go to that Convention. I guess it's his line. What he is angling for in effect, is keep your options open. Don't get tied in with an organization now, because you may want to bring

P Texans for Nixon, I know, I know (unintelligible).

M Well, on the other side of the coin, of course, our Republican friends are getting itchy and I keep telling them to go out and write you some more Republicans -- but they say well, we're going to lose good people to the gubernatorial campaign, etc., etc.

P Let 'em go.

H So what?

P Let them go. They don't -- that doesn't make any difference. Hold it firm. We need Texas Democrats. We don't win Texas -- we haven't won it yet -- but you don't win it with Republicans. We never have. And let's just face it, that's the way the score is. Tower has won it once or twice but -- accidents, pure accidents. (Unintelligible) any Democrat, believe me, by any Democrat (unintelligible) committee of that sort is better. Rather than that fellow who is finance chairman down there. What's his name?

H Al Fay

P Al Fay

M You mean Peter O'Donnell? Peter's left.

H He's left?

M Peter quit. He's (unintelligible) national committee (unintelligible).

H I'll be darned.

M Agnitch is the new national committeeman.

P Yeah.

H O'Donnell was such a horrible whiner.

P Ohio!

M Ohio we still have the Bliss.

P Bliss is still.

M Situation.

P I think going for the old timer there is a bad idea. What do you think Bob?

H I think it is a good idea.

M Well, we have to, Mr. President -- almost have to -- to keep the Taft forces and the Rhodes forces and the rest of them.

P Well, we've got to go for the young too and the rest, but I guess Bliss is

M Well, Bliss is going to come back to work for me, you see, he wants the recognition.

P Great.

M He's not going to be the guy to come and do the nuts and bolts, but he wants the identification with you and back here to re-establish his

P Let me ask you this. We have these curious reports, which, you've seen these of course, (unintelligible) out of Michigan showing we have a chance in Michigan. Do you think we ought to take a whirl at it or not?

M We're going to take a whirl at it. We're going to take a whirl at all of them.

P Well (unintelligible) even Minnesota?

M Well, I mean a whirl at them to the point where we're going to organize to the teeth and then when it comes to where you're going to spend the money on your media, your mail, your telephone, and things like that, we'll make the judgment a little further down the line.

P Michigan judgment could be very interesting because if it gets really heated up on busing, if it could, and we're on the one side and they're on the other side, you might win the state on that issue. You agree Bob?

H Sure.

M In addition to that, look what you've done for the automobile industry.

H That was a year ago.

P Well, still

M It still can be sold

P Sold lots of cars

M And, Milliken is all aboard and he's working hard, and we've got a good chairman out there.

P I'd even run -- I'd even have some sort of a campaign on that. I'd even do something in Massachusetts. Do you know why? Solely because I think it isn't good to let any one area just go completely.

M No, you can't, because of its rub off on Vermont.

P (unintelligible)

M We've got an added starter there who wants to be the chairman to get out and work and that's the Governor.

P He does?

H Sargeant?

M Why not? He gets

P Won't hurt us!

M He gets on the tube.

H (Unintelligible).

P Well, he's a good liberal fellow.

H He really wants to get in?

M Yep -- and I think we can get it cleared with Brooke and Volpe and all the rest of them.

P I think there's a great deal to be said to go for every state. You know the line I took with these people -- the governors which they all like to hear -- but you take, I was telling Bob the other day that in terms of our own plan, of course, we've got to look at everything you can without killing ourselves or without being over exposed. But, I feel very strongly that

P Wallace in or out, we ought to hit of the southern states that I ought to get to Georgia, Alabama, Louisiana, and Mississippi, because I think if we can sweep that South and of course Texas is the big question mark (unintelligible).

M Did I tell you about Connally's poll that Barnes ran down there? Shows the President did very well -- quite different from our polls.

P In Texas?

M Yep.

P Our poll shows five points behind.

M With Muskie, yeah.

P Of course that would be

H That was awhile back.

M Quite awhile back. Yeah. But John Connally's impression is that you're in good shape in Texas with or without Wallace.

P Well, that's hard to say (unintelligible).

M Well we don't have that liquor thing down there this year that we had in '68. That was what really did us in.

H (Unintelligible).

P You know (unintelligible) really kicked Muskie in (unintelligible) that Harris Poll showed him slipping in the trial heats. Apparently (unintelligible) something similar (unintelligible).

M Well, this has a hell of an impact because the press picks it up and drums on it day in day out.

H Especially because he had been (unintelligible).

P (Unintelligible) Gallup (Unintelligible) even, even in February and now (unintelligible).

M When is this coming out?

P I've got to see the Ambassador -- he's leaving -- he's leaving.

M Oh, is he?

H Going home.

P Yep. Well, anyway John. (Voices fade).

H French Ambassador's name is Kosciusko. Figure that one out.

P For your -- I can't tell you too strongly now with regard to the San Diego thing -- got something to do, do it! Cut our losses and get out. But I do think that from a PR standpoint, Bob, at this time we really ought to.

H (Unintelligible) ahead of time.

P To build (unintelligible). Start a fight right now. Play hard (unintelligible) no question.

M As soon as we see any light through it at all.

P I'd start right now.

M Give them the guidelines and put them right on it and let them stay right on it. (Unintelligible).

P John, I would start the fight right now. (voices fade away).

P Well, Mr. Ambassador, (The French Ambassador and Dr. Henry Kissinger enter)

13. During the days following the publication of the "Dita Beard" memorandum on February 29, 1973, several of the top White House aides were involved in investigating the allegations contained in that memorandum.

The actual settlement of the ITT cases as a quid pro quo for an ITT commitment to the Republican National Convention was the focal point of the Kleindienst Confirmation Hearings which began on March 2, 1972. Peter Flanigan, a White House aide, was the object of considerable attention from the Senate Judiciary Committee and press during the coverage of these hearings.

Mr. PICKLE. If you sent him to Denver, Colo., what was the purpose of the interview?

Mr. COLSON. We were trying at that point in time to determine whether or not that was in fact an authentic memorandum. If you will recall the circumstances at that time the entire thrust of the case that was being built against Mr. Kleindienst, the entire thrust of the case in controversy in the Senate Judiciary Committee turned on the language of that memorandum. The question of whether or not that was in fact an authentic memorandum. The question of whether the facts presented in that memorandum were facts or were not facts were very central to the question of whether Mr. Kleindienst would be confirmed. Those were very serious accusations ostensibly made in Mrs. Beard's memorandum.

It became very critical for us—I say "us", the administration, to know whether in fact that was Mrs. Beard's memorandum or whether it was a forgery or whether it was prepared at some other time for some other purpose, and we had reason to believe the memo was not accurate. The only way one could find out for sure was to go to the person who allegedly wrote it and find out.

Mr. PICKLE. Is it true, Mr. Hunt went to Denver in disguise with a wig on and slipped into the hospital?

Mr. COLSON. No, I never sent Mr. Hunt in disguise or with a wig on.

Mr. PICKLE. I didn't ask that, I asked did he go there and go in disguise?

Mr. COLSON. I have had that reported that he did but I do not know for a fact he did.

Mr. PICKLE. You don't doubt it since it has not been denied?

Mr. COLSON. I have no reason to doubt it.

Mr. PICKLE. Why did he put a disguise on if you were properly concerned about Mr. Kleindienst, why didn't you put on your Sunday-go-to-meeting suit and fly out there and tell the press you were going to do it?

Mr. COLSON. I didn't suggest to Mr. Hunt how he should conduct the interview. I simply told him to go out and find out whether it was her memorandum, whether she had written it, and if it was true.

Mr. PICKLE. You didn't discuss anything about putting on a disguise and going into the hospital?

Mr. COLSON. No, sir.

Mr. PICKLE. That was never mentioned, that was Mr. Hunt's idea entirely?

Mr. COLSON. Yes, it was.

Mr. PICKLE. Did you concur with it?

Mr. COLSON. I don't know that the subject came up quite that way. I would have to trace a little more of the background to give you an accurate understanding of what happened. There had been growing evidence in the early days of March that the memorandum was not authentic. Mr. Hunt wrote me a memorandum I believe on the 10th of March in which he said that information had come to his attention that the memorandum was not authentic. He proposed in the memo-

Text of Kleindienst Statement on I.T.T.

Special to The New York Times

WASHINGTON, Oct. 31—Following is the text of a statement issued by former Attorney General Richard D. Kleindienst in defense of his role in an antitrust case against the International Telephone and Telegraph Corporation:

Three weeks ago I had a conversation at the Special Prosecutor's office with Mr. Cox and two of his assistants concerning the handling of the I.T.T. antitrust case during my tenure as Deputy Attorney General. A story in The New York Times yesterday, which was repeated on the networks and in newspapers around the country, contained a very specific report of one part of that conversation.

As a result of the leak to The Times, I have been accused on national television of having given false information to the Senate Judiciary Committee at the time of my nomination as Attorney General. That accusation is false.

My conversation with Professor Cox was held under strict assurances of confidentiality, and as Professor Cox has stated, was a serious breach of faith on the part of the Special Prosecutor. I continue to regard my conversation with Professor Cox as confidential, but because of the distorted and misleading accounts of my conduct that have appeared in the press, I feel compelled at this time to relate an important aspect of the event which was not leaked.

On Monday afternoon, April 19th, 1971, Mr. Ehrlichman abruptly called and stated that the President directed me not to file the appeal in the Grinnel case. That was the last day in which that appeal could be taken. I informed him that we had determined to take that appeal, and that he should so inform the President. Minutes later the President called me and, without any discussion ordered me to drop the appeal. Immediately thereafter, I sent word to the President that if he persisted in this direction I would be compelled to submit my resignation. Because that was the last day in which the appeal could be perfected, I obtained an extension of time from the Supreme Court to enable the President to consider my position.

The President changed his mind and the appeal was filed 30 days later in the exact form it would have been filed one month earlier. Thus, but, but for my threat to resign, the Grinnell case would never have been appealed and we would never have been able to obtain what even Professor Cox has characterized as a settlement highly advantageous to the United States.

At the time of my testimony before the Senate Judiciary Committee, I was not asked whether I had had any contacts with the White House at the time of this decision, and I did not deny any such contacts.

Focus of the Hearings

The focus of the hearings dealing with the I.T.T. affair was the negotiations in May, June and July of 1971 leading to settlement of the pending cases on July 31. I was questioned at length concerning these negotiations and particularly with reference to any conversations or meetings I might have had with Mr. Peter Flanigan of the White House staff. It was in the context of those questions that I made the statement quoted on C.B.S. news last evening, as follows:

"In the discharge of my responsibilities as the Acting Attorney General in these cases, I was not interferred with by anybody at the White House. I was not importuned: I was not pressured I was not directed."

It was also in response to a question by Senator Fong concerning Mr. Flanigan that I made the other statement quoted by C.B.S., as follows:

". . . I would have had a vivid recollection if someone at the White House had called me up and said, 'Look, Kleindienst, this is the way we are going to handle that case.' People who know me, I don't think would talk to me that way, but if anybody did it would be a very sharp impact on my mind because I believe I know how I would have responded. No such conversation occurred."

Both of these statements, taken in the context in which they were made, were completely accurate.

In short, I did not perjure myself or give false information to the Senate Judiciary Committee. A fair and objective reading of the transcript of my testimony will so indicate.

I deeply regret the circumstances which have compelled me to make this statement. However, in view of the serious breach of faith by the Special prosecutor and the distorted treatment of my testimony in the press, I have no other choice. I have done no wrong.

RICHARD G. KLEINDIENST

THURSDAY, MARCH 2, 1972

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to notice, at 10:40 a.m., in room 2228, New Senate Office Building, Senator James O. Eastland, chairman, presiding.

Present: Senators Eastland, Ervin, Hart, Kennedy, Bayh, Burdick, Tunney, Hruska, Fong, Scott, Thurmond, Cook, Mathias, and Gurney.

Also present: Francis C. Rosenberger, Peter M. Stockett, Tom Hart, Hite McLean, Thomas B. Collins, and Robert B. Young, of the committee staff, and various assistants to Senators.

The CHAIRMAN. The committee will be in order.

Mr. Kleindienst, hold up your hand.

Do you solemnly swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Mr. KLEINDIENST. I do.

Mr. MCLAREN. I do.

Mr. ROHATYN. I do.

TESTIMONY OF RICHARD G. KLEINDIENST, ACTING ATTORNEY GENERAL, ACCOMPANIED BY RICHARD W. McLAREN, FORMER ASSISTANT ATTORNEY GENERAL, ANTITRUST DIVISION; FELIX G. ROHATYN, DIRECTOR, INTERNATIONAL TELEPHONE & TELEGRAPH CORP.; AND WALKER B. COMEGYS, ANTITRUST DIVISION, DEPARTMENT OF JUSTICE

The CHAIRMAN. This hearing was called at the request of Mr. Kleindienst.

Now, the way the Chair thinks the proper procedure would be is to hear Mr. Kleindienst, Mr. McLaren, and the other gentlemen, and then throw the matter open for questions by whoever on the committee wants to ask them.

Now, Mr. Kleindienst, you may proceed.

Mr. KLEINDIENST. Thank you, Mr. Chairman, and members of the committee.

First I want to express my personal appreciation to the committee for providing me this opportunity at the earliest possible moment to provide the committee the information that I have with respect to some of the charges that have been made in the public press in the last several days.

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The reason why I asked for this hearing, Mr. Chairman, and members of the committee, is because charges have been made that I influenced the settlement of Government antitrust litigation for partisan political reasons. These are serious charges, and by virtue of the fact that the confirmation of my nomination as the Attorney General of the United States is before the U.S. Senate, I would not want that confirmation to take place with a cloud over my head, so to speak, nor would I want the U.S. Senate to act upon my nomination if there was any substantial doubt in the minds of any of the Members of the U.S. Senate to the effect that while I performed my official duties on behalf of the U.S. Government in the past 3 years as the Deputy Attorney General, that I engaged in any improper conduct or in any conduct that would go to or be relevant to the consideration of my confirmation by the U.S. Senate.

I am here this morning with respect to the matters involving the ITT Co. and its antitrust matters before the Department of Justice to tell you what I did. And I have here with me this morning Judge McLaren, the Federal District Judge of the Northern District of Illinois, and Mr. Felix Rohatyn, a member of the board of directors of ITT, being the two persons with whom I had any dealings in connection with these matters to also have them tell you what they did. And to the extent that it involves me, to have them tell you what I did.

I was involved in any way with respect to these antitrust matters by virtue of the fact that the Attorney General, in 1969, disqualified himself from the consideration of any matters involving the I.T. & T. Corp. The reason why he disqualified himself is that his former law firm has performed legal services, I believe, for subsidiaries of I.T. & T. and, therefore, felt from the standpoint of proper conduct that he should not become involved in any matter or consideration or decision that would involve these companies.

In 1969, at the recommendation of then Assistant Attorney General McLaren in the Antitrust Division I signed as the Attorney General in these cases, and as required by law, the complaints or authorized the filing of complaints against the acquisition or proposed acquisition by I.T. & T. in connection with three corporations, the Canteen Corp., the Grinnell Corp., and the Hartford Corp. Those complaints and the nature of those actions will be discussed in more detail, I believe, by Judge McLaren this morning.

But, in any event, all three of those complaints, seeking on behalf of the Government to prevent their acquisition by I.T. & T. were filed in the year 1969 by the Department of Justice.

I really had very little to do or relationship with or knowledge about the ordinary process of those cases in the year 1969. Indeed, I have no recollection of having any meetings other than routine, or of a very nominal nature in that year with respect to any one of those cases.

Approximately April 20, 1969, I received a call from Mr. Felix Rohatyn, who is sitting here to my left, in which he identified himself to me as a member of the board of directors of I.T. & T., and he stated that he was not a lawyer and that he would like to come to my office to discuss some of the economic consequences of the policy of the Department of Justice to require by I.T. & T. a divestiture of the Hartford Insurance Co. As a result of our discussion on the telephone Mr. Rohatyn came to my office on April 20, 1969. He again opened up the conversation, and incidentally, only Mr. Rohatyn and I were

13D. CHARLES COLSON MEMORANDUM, MARCH 13, 1972.

THE WHITE HOUSE

WASHINGTON

March 13, 1972

MEMORANDUM FOR: JOHN DEAN

FROM: CHARLES COLSON

One of our great problems in the ITT fiasco has been our inability to present directly and succinctly some obvious strong facts on our side. The attached is an attempt to summarize the three key points that need to be made over and over and over. I thought this might be useful to you.

13D. CHARLES COLSON MEMORANDUM, MARCH 13, 1972

There has been so much innuendo, so much political rhetoric and so many smear charges in connection with the ITT case that I don't wonder that people may be confused about it. A few facts need to be put in perspective:

1. In two weeks of hearings before the Senate Judiciary Committee there has not been one scintilla of evidence of any wrong doing, not one scintilla of evidence that there was any connection between the anti-trust decree in the ITT case and ITT's offer to a civic committee in San Diego to help San Diego make a bid to obtain the Republican National Convention.
2. The press continually reports 'ITT's contributions to the GOP". The simple fact is that Sheraton Hotels, a subsidiary of ITT, made a pledge to the civic interests in San Diego to help guarantee the financing necessary for the city to obtain the convention in San Diego. Whether San Diego got the convention or Chicago or Miami, would be of little financial concern to the Republican National Committee and the financing of this year's political campaign. In short, it was not the Republican Party to whom any pledge of financial assistance was offered.

3. Perhaps most importantly, the government did not, as has been charged, "drop" the ITT case. It forced upon ITT a tough, hard settlement requiring ITT to divest itself of 6 major corporations and to agree not to engage in any further acquisitions for 10 years without Department of Justice approval. It is perhaps fair to note that this decree, one of the toughest anti-trust decisions in history and the largest, was achieved by this Administration even though the prior Administration had decided not to pursue anti-trust litigation against this same corporation. It is important also to note that this Administration has a record second to none in vigorous anti-trust enforcement. Most lawyers and, indeed, most businessmen, to their own displeasure, agree that we have been the most vigorous enforcers of the anti-trust laws in this country. Finally, the Solicitor General of the United States and former Dean of the Harvard Law School, Erwin Griswold, appointed incidentally to this position by our predecessor Democratic Administration, testified under oath last week not only that this was a very tough settlement imposed on ITT, but that had the government not obtained this settlement it probably couldn't have sustained the burden of its case in the Supreme Court. Dean Griswold was one of the primary officials whose judgment was considered in reaching the ITT settlement.

What the American public has been subjected to in the past two weeks has en a campaign of smear and innuendo by one of the most disreputable

columnists in America; Jack Anderson has tried to slander decent government officials all the way from Dean Griswold to President Nixon with half truths and fourth-removed hearsay evidence. The simple facts don't support his charges; indeed, the facts are quite to the contrary, although they have been largely overlooked in all of the political harangue that has been so widely reported.

Kleindienst Faces Further Questions

By Sanford J. Ungar
Washington Post Staff Writer

Richard G. Kleindienst, President Nixon's embattled nominee for Attorney General, is to return to Capitol Hill for the seventh time today to face questioning by the Senate Judiciary Committee.

The committee, sharply divided on whether to send Kleindienst's nomination to the Senate floor, voted 9-to-5 yesterday to extend the confirmation hearings for one more day to review new inconsistencies in the record.

Beating down Democratic efforts to call other witnesses, however, the committee imposed upon itself a 5 p.m. deadline for a final vote on whether to recommend that Kleindienst be confirmed for the Cabinet post vacated March 1 by John N. Mitchell.

Sens. Edward M. Kennedy (D-Mass.) and John V. Tunney (D-Calif.) immediately threatened a protracted floor fight to defeat Kleindienst or prevent a vote altogether unless further hearings are convened.

Senate Democratic Whip Robert C. Byrd of West Virginia, who is acting as majority leader while Sen. Mike Mansfield (D-Mont.) is in China, acknowledged that Senate consideration of Kleindienst could take "several weeks."

At the same time, Tunney demanded that the Justice Department launch an investigation of whether any of the wit-

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nesses at the Kleindienst hearings have commited perjury.

If the Judiciary Committee endorses Tunney's demand — as he predicted it would — that could throw another stumbling block in the path of Kleindienst's approval by the Senate.

The questioning of Kleindienst today, limited to a maximum of 6½ hours by the committee's 5 p.m. deadline for a report to the floor, is expected to focus on the disclosure by White House aide Peter M. Flanigan, in a letter Monday in which he said he had several conversations with Kleindienst last year about a settlement of antitrust cases against the International Telephone and Telegraph Corp.

Flanigan, who gave limited testimony before the committee last week, said in the letter that he passed along ITT's complaints about a proposed settlement to the then deputy attorney general and also informed him when an outside consultant had completed his financial analysis of ITT's arguments.

Kleindienst, testifying last month, said he did not recall discussing the ITT matter at the White House, but suggested there might have been "casual reference" to it in other conversations there.

On March 8, however, the nominee specifically said before the committee that "I had no conversation with Mr. Flanigan" at the time the outside financial analysis of ITT was submitted by Wall Street investment banker Richard J. Ramsden.

The Judiciary Committee has been minutely probing the course of administration policy in the ITT antitrust cases, because of an alleged company memorandum published by columnist Jack Anderson linking the settlement to an ITT pledge of at least $200,000 to help bring the Republican National Convention to San Diego this year.

Democrats on the committee are also expected to take the opportunity today to quiz Kleindienst about why he retained Harry D. Steward as the U. S. attorney in San Diego despite a finding by the Criminal Division that Steward had engaged in "highly improper" conduct.

Tunney failed yesterday in his effort to persuade the committee to call further witnesses familiar with Steward's decision to quash a grand jury subpoena of a prominent San Diego Republican during an investigation of illegal contributions to President Nixon's 1968 campaign.

Sen. James O. Eastland (D-Miss.), chairman of the Judiciary Committee, predicted that Kleindienst would have nine or 10 votes in his favor during today's final review of his nomination.

"I don't think there are any loose ends," Eastland told reporters. "I don't think one day will bring out anything new."

Tunney agreed with Eastland's prediction of the final vote in committee, but added that "I think we have a very

Kleindienst Approved, 11-4, As Panel Ends ITT Probe

By Sanford J. Ungar
Washington Post Staff Writer

The Senate Judiciary Committee voted 11 to 4 last night to reaffirm its recommendation of two months ago that Richard G. Kleindienst be confirmed as Attorney General.

But the endorsement fell short of the unanimous approval given Kleindienst by the committee on Feb. 24.

A week after that original vote, the confirmation hearings on the Kleindienst nomination were reopened, at his own request, when allegations were raised that he was involved in the settlement of three antitrust cases against the International Telephone and Telegraph Corp. in exchange for ITT's pledge of at least $200,000 to help bring the Republican National Convention to San Diego this year.

The ITT controversy and other issues raised against Kleindienst during the hearings could still threaten his confirmation by the full Senate. Democrats pledged yesterday to wage a protracted floor fight against Kleindienst.

In a final day of testimony before the Judiciary Committee yesterday, Kleindienst said he was unable to recall the details of several contacts with White House aide Peter M. Flanigan last year concerning the ITT antitrust cases.

He insisted, however, that he had made an "honest, sincere and conscientious effort" to clear up inconsistencies in the hearing record.

President Nixon's nominee to succeed John N. Mitchell as head of the Justice Department received the votes of all Republicans on the Senate committee, as well as four Democrats.

Only Sens. Edward M. Kennedy of Massachusetts, Birch Bayh of Indiana, Quentin N. Burdick of North Dakota and John V. Tunney of California, all Democrats, voted against favorably reporting Kleindienst's name to the Senate floor.

Sen. John L. McClellan (D-Ark.), who has not attended any of the 24 days of hearings on the nomination, was the only member of the committee not voting.

But Sens. Robert C. Byrd of West Virginia, the Senate Democratic Whip, and Philip A. Hart (D-Mich.) announced that their votes in committee did not preclude a change of heart when Kleindienst's name comes up before the full Senate.

A final vote on the Klein-

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dienst nomination is still weeks away and, if Kennedy, Tunney and other opponents have their way, may never come up at all.

Judiciary Committee Chairman James O. Eastland (D-Miss.) said all committee members would have until May 5 to submit their "individual views" on the nomination.

Exactly when the Kleindienst nomination comes up on the floor will be decided by Senate Majority Leader Mike Mansfield (Mont.) on his return from a visit to China with his Republican counterpart, Hugh Scott of Pennsylvania.

Byrd has already announced, however, that if any senator places a "hold" on consideration of Kleindienst it will be respected for a week to 10 days.

Eastland, a firm supporter of Kleindienst, told reporters last night that debate on the Cabinet nominee can be expected to last "several weeks," but that he was confident enough votes would be found to cut off any filibuster by Kleindienst opponents.

Defending against charges that he had deserted his Democratic colleagues on the Kleindienst nomination, Eastland said, "I'm for a good man. I'm not a party hack. Right comes above party."

Denied by ITT Head

3/16/72

Geneen Insists He Didn't Know About Memo

By Sanford J. Ungar
Washington Post Staff Writer

Harold S. Geneen, president of the multibillion-dollar International Telephone and Telegraph Corp., testified yesterday that there was "absolutely no connection" between the settlement of three government antitrust cases against ITT and its contribution to help bring the Republican National Convention to San Diego this year.

In a late afternoon appearance before the Senate Judiciary Committee, the executive said "I know nothing" about a published memorandum by ITT chief lobbyist Dita D. Beard which linked the two matters.

Geneen conceded, however, that after Mrs. Beard's memorandum was published by syndicated columnist Jack Anderson, "some kind of documents were shredded" at the Washington office of ITT by corporate officials from New York.

He said he had ordered an internal investigation of the shredding incident and would report back to the committee about it, perhaps today.

"This was probably more a reaction to the feeling that our files were open to the public than any attempt to prevent a review" of them, Geneen said.

In a 20-page prepared statement that he read, Geneen also insisted that ITT's commitment to support the GOP convention was $200,000—rather than the $400,000 that has been reported and was confirmed by the Republican National Chairman, Sen. Bob Dole (R-Kan.) last week.

ITT's Sheraton subsidiary made the financial commitment, Geneen said, to promote a new luxury hotel being built in San Diego, on the condition that it be President Nixon's headquarters during the convention.

Senators, foiled on witness, may try to block Kleindienst

Boston 4/13/72

By Charles E. Clafley
Globe Washington Bureau

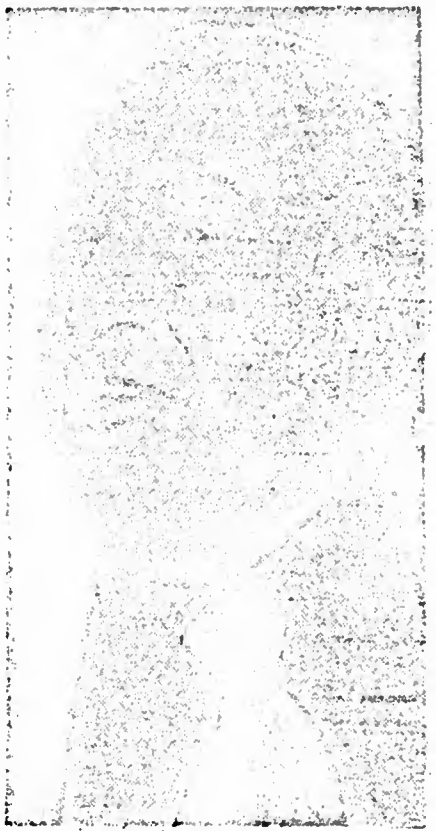
WASHINGTON — The Senate Judiciary Committee yesterday voted against ordering White House aide Peter M. Flanigan and other Administration officials to testify in the nomination hearings of Attorney General-designate Richard G. Kleindienst.

But after the committee vote Sen. Sam J. Ervin Jr. (D-N.C.) reaffirmed his intention to try to block the Kleindienst nomination unless Flanigan appears to describe his role in the Justice Department's out-of-court settlement of an antitrust suit against International Telephone and Telegraph Corp. (ITT).

Ervin, a former North Carolina Supreme Court judge and an expert on constitutional law, said the White House claim — that executive privilege embraces communication between aides and people outside the Administration — is absurd.

Executive privilege, the Nixon Administration contends, forbids Congress from compelling executive branch officials to testify.

ITT, Page 4



SEN. SAM ERVIN
... "White House claim absurd"

Kleindienst faces new hurdle

ITT

Continued from Page 1

"I'm adamantly opposed ... either the committee or the Senate taking any action whatsoever until these ... appear before the committee," Ervin said.

Ervin acknowledged the ... necessity for ... executive privilege involving communication between White House aides and the President, or between Administration officials making policy.

But he said there is "no justification" for the claim that executive privilege is designed to protect the President has any bearing on other employees and third persons "dealing with matters of public record such as antitrust ..."

White House press secretary Ronald L. Ziegler has repeated his statement that he "doesn't contemplate Mr. Flanigan testifying," and extended it to include another aide committee members want to question, William Timmons.

Sen. Robert C. Byrd of West Virginia, assistant Democratic leader, said he also might vote against the nomination if Flanigan invokes executive privilege.

Asked if he would be satisfied if Flanigan submitted a statement rather than appear in person, Byrd answered that it "would depend on the statement."

Byrd, although a member of the committee, has not been present at any of the 15 days of hearings. He has attended the committee's executive sessions.

In its executive session yesterday, the committee rejected three motions, by a tie vote of 6-6, to subpoena Flanigan and other White House aides. The line-up was strictly according to party lines, with the chairman, James O. Eastland of Mississippi, abstaining.

The committee rejected a final motion to invite Flanigan to appear at a closed session by a vote of 9-4, with Sens. Byrd, Eastland, Marlow Cook (R-Ky.) and John V. Tunney (D-Calif.), favoring the idea.

RICHARD KLEINDIENST
... hearing continues

PETER FLANIGAN
... no subpoena

Sen. Tunney said the committee's votes will jeopardize Kleindienst's chances for Senate confirmation. "There is no way we can get the truth until Flanigan testifies," Tunney said.

Sen. Edward M. Kennedy said he expects the matter of Flanigan's testimony to come up in the committee again before the agreed-upon April 20 cut-off of the hearings.

In other developments yesterday, the committee voted to have two Denver physicians, Joseph Snyder and Ray Prier, examine ITT lobbyist Dita Beard to determine if she is physically able to travel here and testify. She earlier was questioned by a subcommittee at a Denver hospital.

The committee also released a letter to Chairman Eastland from John W. Dean, counsel to President Nixon, advising members that Flanigan's involvement in the ITT case was "as stated by Judge (Richard W.) McLaren in his sworn testimony."

McLaren, former chief of the Justice Department's antitrust division, testified that he used Flanigan as a conduit in acquiring the services of a New York investment analyst, Richard J. Ramsden.

Ramsden evaluated a presentation by ITT which said that if the conglomerate were forced to divest itself of three companies it had absorbed in a merger, the economic consequences would be devastating. Ramsden's evaluation supported the ITT claim, and weighed in McLaren's decision to settle out of court.

Former New York Federal Judge Lawrence E. Walsh, whose law firm represents ITT, testified yesterday afternoon concerning his dealings with Kleindienst in the case.

Walsh said he sent Kleindienst a memorandum in support of a review of the Administration's policy toward diversification by merger, in the hope it might relax its tough attitude toward merger.

He described his relationship with the Attorney General-designate as "friendly, and one of mutual respect."

14. The President left for an official visit to the People's Republic of China on February 17, 1972; he returned on February 28, 1972. He spent the weekend following his return at Key Biscayne, Florida. On May 20, 1972, the President went to Moscow, returning on June 1, 1972.

Inspection of Tax Returns

Executive Order 11650. February 16, 1972

INSPECTION BY CERTAIN CLASSES OF PERSONS AND STATE AND FEDERAL GOVERNMENT ESTABLISHMENTS OF RETURNS MADE IN RESPECT OF CERTAIN TAXES IMPOSED BY THE INTERNAL REVENUE CODE OF 1954

By virtue of the authority vested in me by section 6103 (a) of the Internal Revenue Code of 1954, as amended (26 U.S.C. 6103(a)), it is hereby ordered that returns made in respect of the taxes imposed by chapters 1, 2, 3, 5, 6, 11, 12, and 32, subchapters B and C of chapter 33, subchapter B of chapter 37, and chapter 41 of such Code shall be open to inspection by certain classes of persons and State and Federal Government establishments in accordance and upon compliance with the rules and regulations prescribed by the Secretary of the Treasury in Treasury decision 6543, relating to inspection and use of returns by such classes of persons and State and Federal Government establishments, approved by the President on January 17, 1961, the amendments thereto approved by the President on April 4, 1963, and March 18, 1965, and the amendment thereto approved by me this date.

RICHARD NIXON

The White House
February 16, 1972

[Filed with the Office of the Federal Register, 2:58 p.m., February 16, 1972]

Red Cross Month, March 1972

Proclamation 4110. February 16, 1972

By the President of the United States of America a Proclamation

Born in war and raised in adversity, the American Red Cross has evolved many traditions in its universal quest to ease human suffering, but none have served it so durably as its tradition of flexibility.

Since well before the turn of the 20th century, through times that tested the very soul of our humanitarian instincts, the Red Cross has proven equal to the challenges of each era with unfailing resourcefulness, zeal and compassion. Red Cross programs and services we have long taken for granted—from disaster relief and blood banks to nurse training and aid to military personnel—grew out of its pioneering approach in meeting generations of unprecedented crises.

This tradition has carried forward into the 1970s with undiminished vigor, and the Red Cross emblem may be found on banners flying over inner-city child care centers and drug abuse clinics. It is stamped on publications and continuing education materials dealing with ecological concerns, race relations, the advancement of the arts, and rural development.

And as a member of the global society, the Red Cross continues to fulfill its international enterprise of mercy, but again with a flexibility that makes its mission as vital and viable as at anytime in its history.

NOW, THEREFORE, I, RICHARD NIXON, President of the United States of America and Honorary Chairman of the American National Red Cross, do hereby designate March, 1972, as Red Cross Month, a month when every citizen is asked to join, serve, and contribute in the same example of unselfish spirit that has characterized the Red Cross since its founding.

IN WITNESS WHEREOF, I have hereunto set my hand this sixteenth day of February, in the year of our Lord nineteen hundred seventy-two, and of the Independence of the United States of America the one hundred ninety-sixth.

RICHARD NIXON

[Filed with the Office of the Federal Register, 11:54 a.m., February 17, 1972]

THE PRESIDENT'S TRIP TO THE PEOPLE'S REPUBLIC OF CHINA

The President's Remarks at the Departure Ceremony on the South Lawn at the White House. February 17, 1972

Mr. Vice President, Mr. Speaker, Members of the Congress, and Members of the Cabinet:

I want to express my very deep appreciation to all of you who have come here to send us off on this historic mission, and I particularly want to express appreciation to the bipartisan leadership of the House and Senate who are here.

Their presence and the messages that have poured in from all over the country to the White House over the past few days, wishing us well on this trip, I think, underline the statement that I made on July 15, last year, when I announced the visit.

That statement was, as you will recall, that this would be a journey for peace. We, of course, are under no illusions that 20 years of hostility between the People's Republic of China and the United States of America are going to be swept away by one week of talks that we will have there.

But as Premier Chou En-lai said in a toast that he proposed to Dr. Kissinger and the members of the advance group in October, the American people are a great people. The Chinese people are a great people. The fact that they are separated by a vast ocean and great differences in philosophy should not prevent them from finding common ground.

As we look to the future, we must recognize that the Government of the People's Republic of China and the Government of the United States have had great differences. We will have differences in the future. But what we must do is to find a way to see that we can have differences without being enemies in war. If we can make progress toward that goal on this trip, the world will be a much safer world and the chance particularly for all of those young children over there to grow up in a world of peace will be infinitely greater.

I would simply say in conclusion that if there is a postscript that I hope might be written with regard to this trip, it would be the words on the plaque which was left on the moon by our first astronauts when they landed there. "We came in peace for all mankind."

Thank you and good by.

NOTE: The President spoke at 10:10 a.m. on the South Lawn at the White House. Following his remarks, the President, the First Lady, and members of the official party boarded the helicopter for the flight to Andrews Air Force Base. The ceremony was broadcast live on radio and television.

The White House had announced earlier, at Key Biscayne, Fla., on February 12, that the official party would include the following:

THE PRESIDENT
MRS. NIXON
SECRETARY OF STATE WILLIAM P. ROGERS
HENRY A. KISSINGER, Assistant to the President for National Security Affairs
H. R. HALDEMAN, Assistant to the President
RONALD L. ZIEGLER, Press Secretary to the President
BRIG. GEN. BRENT SCOWCROFT, Military Assistant to the President
MARSHALL GREEN, Assistant Secretary of State for East Asian and Pacific Affairs
DWIGHT L. CHAPIN, Deputy Assistant to the President
JOHN A. SCALI, Special Consultant to the President
PATRICK J. BUCHANAN, Special Assistant to the President
ROSE MARY WOODS, Personal Secretary to the President
ALFRED LE S. JENKINS, Director for Asian Communist Affairs, Bureau of East Asian and Pacific Affairs, Department of State
JOHN HOLDRIDGE, Senior Staff Member, National Security Council
WINSTON LORD, Special Assistant to Dr. Kissinger

Our communiqué indicates, as it should, some areas of difference. It also indicates some areas of agreement. To mention only one that is particularly appropriate here in Shanghai, is the fact that this great city, over the past, has on many occasions been the victim of foreign aggression and foreign occupation. And we join the Chinese people, we the American people, in our dedication to this principle: That never again shall foreign domination, foreign occupation, be visited upon this city or any part of China or any independent country in this world.

Mr. Prime Minister, our two peoples tonight hold the future of the world in our hands. As we think of that future, we are dedicated to the principle that we can build a new world, a world of peace, a world of justice, a world of independence for all nations.

If we succeed in working together where we can find common ground, if we can find common ground on which we can both stand, where we can build the bridge between us and build a new world, generations in the years ahead will look back and thank us for this meeting that we have held in this past week. Let the Chinese people and the great American people be worthy of the hopes and ideals of the world, for peace and justice and progress for all.

In that spirit, I ask all of you to join in a toast to the health of Chairman Mao, of Prime Minister Chou En-lai, and to all of our Chinese friends here tonight, and our American friends, and to that friendship between our two people to which Chairman Chang has referred so eloquently.

NOTE: The Chairman spoke at 8:25 p.m., local time, in the Shanghai Exhibition Hall. He spoke in Chinese and the President in English; their toasts were translated by an interpreter.

As printed above, this item follows the text of the White House press release.

RETURN TO WASHINGTON

Remarks of the President and the Vice President Following the President's Arrival at Andrews Air Force Base. February 28, 1972

THE VICE PRESIDENT. *Mr. President, Mrs. Nixon, distinguished guests, ladies and gentlemen:*

For more than a week we have witnessed through the miracle of satellite television, the sights and sounds of a society that has been closed to Americans for over two decades. We have been made aware of many new things in that society through this visit, Mr. President. We have witnessed much of what you have done with feelings of pride and pleasure and an immense curiosity that has certainly not been diminished by the amount of attention paid by the media to this visit.

I must confess that we have been surprised to some extent by your facility with chopsticks, Mr. President, and by the equal facility of the Chinese orchestra which rendered "America The Beautiful."

But I will say that the week's undertakings were intensively covered—I think that is the understatement of this week, Mr. President—and we enjoyed every minute of it as we watched with pride and approval the way you and the members of your party and our gracious First Lady conducted yourselves.

Weekly Compilation of

PRESIDENTIAL DOCUMENTS

Week Ending Saturday, June 3, 1972

THE PRESIDENT'S TRIP TO AUSTRIA, THE SOVIET UNION, IRAN, AND POLAND

Chronology of Events

Saturday, May 20

The President and Mrs. Nixon boarded the Spirit of '76 at Andrews Air Force Base for the flight to Salzburg, Austria. (For the President's remarks at the departure ceremony, see page 881 of the May 22 issue of the Weekly Compilation of Presidential Documents.)

Arriving at Salzburg Airport at 10:30 p.m., they were greeted by Chancellor Bruno Kreisky of the Federal Republic of Austria.

Sunday, May 21

The President and Chancellor Kreisky met for discussion at Schloss Klesheim.

Mrs. Nixon entertained Mrs. Kreisky at tea at Schloss Klesheim.

The President and Mrs. Nixon were then guests of the Chancellor and Mrs. Kreisky at luncheon at the Kobenzl Hotel (see page 914).

Monday, May 22

After departure ceremonies at Salzburg Airport, the President and Mrs. Nixon flew to Moscow, where they were greeted at Vnukovo II Airport by President Podgorny, Premier Kosygin, Foreign Minister Gromyko, and Ambassador Dobrynin.

In the afternoon, the President met for more than 2 hours with General Secretary Brezhnev.

In the evening, the President and Mrs. Nixon were guests of honor at a dinner hosted by the Presidium of the Supreme Soviet of the U.S.S.R. and the Government of the U.S.S.R. in Granovit Hall in the Grand Kremlin Palace (see pages 915, 916).

Tuesday, May 23

The President and members of the United States party met with Soviet officials in plenary session in Catherine Hall in the Grand Kremlin Palace.

In ceremonies in St. Vladimir Hall, the President and President Podgorny signed an agreement on environmental protection (see page 917). Secretary Rogers and Soviet Health Minister Petrovsky then signed an agreement on medical science and public health (see page 919).

The President and General Secretary Brezhnev met for 2 hours of discussion before the ceremony and for 3 additional hours later in the evening.

During the day, Mrs. Nixon visited a secondary school, toured the Moscow Metro, and had tea with Mrs. Brezhnev, Mrs. Podgorny, and wives of other Soviet officials in the Imperial Living Quarters in the Grand Kremlin Palace.

Wednesday, May 24

In the morning, the President went to the Aleksandrov Gardens to lay a wreath at the Tomb of the Unknown Soldier. He returned to the Grand Kremlin Palace for further discussions with Soviet leaders.

In afternoon ceremonies, the President and Premier Kosygin signed the space cooperation agreement (see page 920) and Secretary Rogers and Committee Chairman Kirillin signed the science and technology agreement (see page 921).

The President then went to Chairman Brezhnev's country residence for additional discussions.

The First Lady visited the Moscow State University and the GUM department store. In the evening, she attended a performance at the New Circus.

Thursday, May 25

The President met for 2 hours with Soviet leaders and a maritime agreement on the prevention of incidents at sea was signed by Navy Secretary Warner and Admiral Gorshkov (see page 922).

Mrs. Nixon visited the Bolshoi School of Choreography and the All-Union Fashion House for a showing of men's and women's clothing by Soviet designers.

In the evening, the President and the First Lady attended a performance of the "Swan Lake" ballet at the Bolshoi Theater.

Friday, May 26

After discussions on trade matters, a communiqué was issued on an agreement between Soviet leaders and President Nixon to establish a U.S.-U.S.S.R. Commercial Commission (see page 924).

that end the two sides decided to create a joint Polish-American Trade Commission.

3. The two sides will encourage and support contacts and cooperation between economic organizations and enterprises of both countries.

4. The two sides expressed their satisfaction with the expanding program of scientific and technical cooperation and appraised positively its mutually advantageous results. Last year's exchange of visits at the cabinet level, which gave attention to the development of scientific and technical cooperation, confirmed the desirability of continuing cooperation in this field.

The two sides expressed their interest in the conclusion of an intergovernmental agreement on comprehensive cooperation in science, technology and culture. Appropriate institutional arrangements will be established to promote work in these fields.

5. The two sides agreed that the increase of mutual economic and personal contacts, including tourism, justifies further development of transportation links between Poland and the United States by sea as well as by air. The two sides expect to sign in the near future an air transport agreement and to establish mutual and regular air connections.

6. The two sides expressed their interest in commemorating the five hundredth anniversary of the birth of Nicholas Copernicus and discussed ways of celebrating it.

7. Both sides welcomed the signing of the Consular Convention by Secretary of State William P. Rogers and Minister of Foreign Affairs Stefan Olszowski and the conclusion of an agreement on the simultaneous establishment on December 1, 1972 of new Consulates—in New York and Krakow, respectively. Both parties welcome these steps as concrete evidence of expanding relations between the two states.

8. The two sides emphasized the positive influence exerted on their mutual relations by the traditions of history, sentiment and friendship between the Polish and American peoples. A prominent part is played in this respect by many United States citizens of Polish extraction who maintain an interest in the country of their ancestors. The two sides recognize that this interest and contacts resulting from it constitute a valuable contribution to the development of bilateral relations.

Signed in Warsaw, June 1, 1972.

REPORT TO THE CONGRESS

The President's Address to a Joint Session of the Congress at the Conclusion of His Trip to Austria, the Soviet Union, Iran, and Poland. June 1, 1972

Mr. Speaker, Mr. President, Members of the Congress, our distinguished guests, my fellow Americans:

Your welcome in this great chamber tonight has a very special meaning to Mrs. Nixon and to me. We feel very fortunate to have traveled abroad so often representing the United States of America. But we both agree after each journey that the best part of any trip abroad is coming home to America again.

During the past 13 days we have flown more than 16,000 miles and we visited four countries. Everywhere we went—to Austria, the Soviet